

Exhibit MM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4 UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
5)
Plaintiff,) Case No.:
6 vs.) 1:19-CV-05244
7)
KIK INTERACTIVE INC.,)
8)
Defendant.)
_____)

VIDEOTAPED/VIDEOCONFERENCE DEPOSITION OF

ILAN LEIBOVICH

PETAH TIKVA, ISRAEL

THURSDAY, DECEMBER 19, 2019

4:16 P.M.

4:16 P.M.

REPORTED BY:

21 BRENDA MATZOV,
CA CSR No. 9243
22 JOB No. 191219BMA

1 Videotaped/videoconference deposition
2 of ILAN LEIBOVICH, taken in the above-entitled
3 cause pending in the United States District
4 Court, Southern District of New York, before
5 BRENDA MATZOV, CA CSR 9243, at Veidan Conferencing
6 Solutions, 35 Ef'al Street, 12th Floor, Petah
7 Tikva, Israel, and simultaneously in Washington,
8 D.C., and Boston, Massachusetts, on Thursday,
9 the 19th day of December, 2019, at 4:16 p.m.

10

11

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30

31

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1 PETAH TIKVA, ISRAEL; THURSDAY, DECEMBER 19, 2019

2 4:16 P.M.

3

16:16:31 4 THE VIDEOGRAPHER: This is the beginning
16:16:32 5 of DVD No. 1, in the videotaped deposition of
16:16:38 6 Ilan Leibovich, being taken on December 19, 2019,
16:16:44 7 at 4:16 p.m., at Veidan Conferencing Solutions,
16:16:47 8 Petah Tikva, Israel, in the matter of United
16:16:55 9 States Securities and Exchange Commission versus
16:16:59 10 Kik Interactive Inc., being heard before the
16:17:03 11 United States District Court, Southern District
16:17:07 12 of New York, Case No. 1:19-CV-05244.

16:17:15 13 I am Amy Katz and the court reporter
16:17:17 14 is Brenda Matzov, both on behalf of Gradillas
16:17:24 15 Court Reporters.

16:17:25 16 Would counsel please state their
16:17:27 17 appearances.

16:17:29 18 MR. MENDEL: David Mendel, for the
16:17:31 19 United States Securities and Exchange Commission.

16:17:34 20 MS. D'ALLAIRD: Laura D'Allaird, for the
16:17:35 21 United States Securities and Exchange Commission.

16:17:39 22 MR. LEASURE: Jeff Leasure, same.

16:17:43 1 MR. SCHLEGELMILCH: Stephan Schlegelmilch,
16:17:43 2 for the U.S. Securities and Exchange Commission.
16:17:46 3 MR. MENDEL: And we're also joined
16:17:48 4 by Philip Shannon, our law clerk, who will be
16:17:49 5 helping us with exhibits.
16:17:53 6 MR. WELSH: Michael Welsh, of Cooley,
16:17:55 7 LLP, on behalf of Kik Interactive.
16:17:57 8 MR. CADIGAN: Luke Cadigan, of Cooley,
16:17:59 9 LLP, same.
16:18:01 10 THE VIDEOGRAPHER: Would the court
16:18:02 11 reporter please state her name, business address,
16:18:05 12 place of license in the United States, and then
16:18:09 13 please swear or affirm the witness.
16:18:45 14 THE COURT REPORTER: My name is Brenda
16:18:45 15 Matzov, with a business address of Tel Hai Street
16:18:45 16 26B, Ra'anana, Israel. My U.S. court reporter's
16:18:45 17 license number is 9243 from the -- from the state
16:18:45 18 of California.
16:18:45 19 I will now swear in the witness.
16:18:45 20
21 //
22 //

16:18:45 1 ILAN LEIBOVICH,
16:18:45 2 called as a witness, being first duly sworn,
16:18:45 3 was examined and testified as hereinafter
16:18:45 4 set forth.

16:18:45 5

16:18:45 6 EXAMINATION

16:18:50 7 BY MR. MENDEL:

16:18:50 8 Q. Good morning or good afternoon in
16:18:52 9 Israel. Thank you very much for participating
16:18:57 10 in this deposition today, Mr. Leibovich.

16:19:01 11 Can you say your name one more time?

16:19:06 12 A. Ilan Leibovich.

16:19:08 13 Q. Leibovich. Okay. I'll pronounce it
16:19:10 14 as best I can.

16:19:11 15 And as I mentioned, my name is David
16:19:16 16 Mendel. I represent the United States Securities
16:19:19 17 and Exchange Commission. And we are plaintiffs
16:19:21 18 in a lawsuit in the United States District Court,
16:19:25 19 in the Southern District of New York, in the
16:19:28 20 United States.

16:19:30 21 I'd like to start the deposition today
16:19:33 22 just by going over certain procedures and logistics

16:19:38 1 for the record. I'll say for the record that the
16:19:41 2 witness and his counsel are in Tel Aviv, Israel.

16:19:46 3 Correct?

16:19:46 4 A. Yes.

16:19:47 5 Q. And the stenographer and the videographer
16:19:53 6 are with the witness in -- in the same room. This
16:19:56 7 is a -- this deposition is being performed by
16:19:58 8 video-teleconference. And the SEC, including me,
16:20:02 9 are participating from our offices in Washington,
16:20:05 10 D.C. And counsel for Kik is participating from
16:20:09 11 the office of Cooley, LLP, which is Kik's counsel,
16:20:13 12 in Boston, Massachusetts.

16:20:16 13 Also I'd like to read into the record
16:20:18 14 a stipulation reached by the parties, the SEC
16:20:22 15 and Kik, about the conduct of the deposition.

16:20:26 16 That stipulation has been pre-marked
16:20:29 17 as deposition Exhibit 81. Ms. Matzov, if you
16:20:36 18 have that, you can provide it to the witness
16:20:40 19 to follow along.

16:20:43 20 THE COURT REPORTER: One moment.

16:21:02 21 He has it.

16:21:03 22 MR. MENDEL: Let me know when he has

16:21:03 1 it.

16:21:03 2 THE COURT REPORTER: He has it.

16:21:05 3 MR. MENDEL: Great. So I'll just read

16:21:06 4 in the stip -- the stipulation. This was entered

16:21:09 5 into on December 11 between SEC and Kik. The

16:21:14 6 stipulation says:

16:21:15 7 "Plaintiff U.S. Securities and Exchange

16:21:17 8 Commission ... and defendant Kik Interactive Inc.

16:21:20 9 ... hereby stipulate pursuant to Rules 28, 29,

16:21:22 10 and 30 of the Federal Rules of Civil Procedure

16:21:27 11 as follows:" (As read.)

16:21:28 12 "1. The deposition of Ilan Leibovich ...

16:21:30 13 may be taken pursuant to the procedures set forth

16:21:32 14 in the SEC's Notice of Deposition by Remote Means

16:21:37 15 of Ilan Leibovich, dated December 2, 2019 ...

16:21:41 16 attached hereto as Attachment A." (As read.)

16:21:44 17 And Attachment A is provided with the

16:21:46 18 stipulation.

16:21:49 19 "2. The deposition may be conducted

16:21:50 20 before a stenographer as described in the Notice."

16:21:53 21 "3. The stenographer shall administer

16:21:55 22 an oath to the witness pursuant to a U.S. license

16:21:56 1 held by the stenographer."

16:22:03 2 Ms. Matzov has done that, as you know.

16:22:05 3 And:

16:22:05 4 "4. As the SEC has arranged, Kik shall

16:22:09 5 participate" by -- "by video-teleconference from"

16:22:10 6 Boston -- "Boston, Massachusetts." (As read.)

16:22:13 7 Which they are doing now.

16:22:17 8 That's all I have for Exhibit 81.

16:22:20 9 And then in addition --

16:22:21 10 MR. WELSH: David.

16:22:21 11 MR. MENDEL: Yes, Michael?

16:22:24 12 MR. WELSH: There's -- there's --

16:22:24 13 before we move forward, I want to state for

16:22:27 14 the record -- can we stipulate at the outset

16:22:29 15 that all objections other than form will be

16:22:33 16 preserved?

16:22:34 17 MR. MENDEL: Yes.

16:22:35 18 MR. WELSH: Thank you.

16:22:37 19 MR. MENDEL: I wanted to address,

16:22:38 20 before also moving to the substance, how the

16:22:42 21 parties are handling exhibits today. So the

16:22:47 22 stenographer has in her possession in Tel Aviv

16:22:49 1 documents provided by the SEC, which have been
16:22:55 2 pre-marked as exhibits.

16:22:58 3 Yesterday evening, counsel for the
16:22:59 4 SEC, me, I e-mailed the same documents to Kik's
16:23:04 5 counsel so they are in their possession. In
16:23:09 6 addition, for any particular exhibit being
16:23:11 7 discussed, the SEC can share the exhibit with
16:23:14 8 the witness and with defense counsel, Kik, by
16:23:19 9 video-teleconference.

16:23:20 10 I've been told right before the start
16:23:22 11 of this deposition that either Cooley or the
16:23:27 12 witness prefers for us not to show the document
16:23:31 13 on our screen because that results in minimizing
16:23:34 14 your view of the SEC counsel.

16:23:37 15 Is that correct?

16:23:42 16 THE COURT REPORTER: Yes.

16:23:43 17 MR. MENDEL: Okay. So the way we're
16:23:45 18 going to do this, I think, is all the parties
16:23:48 19 have their copies of their deposition exhibits
16:23:52 20 provided by the SEC. We'll move along. If
16:23:55 21 there's some question about what part of a
16:23:58 22 document we're referring to, please speak up.

16:24:00 1 And what we can do is revert to showing the
16:24:04 2 document by VTC to make sure we're all on the
16:24:08 3 same page or same part of a page. Okay?
16:24:10 4 MR. WELSH: And for the record, Cooley
16:24:11 5 has no objection to you showing the documents
16:24:15 6 that way.
16:24:16 7 MR. MENDEL: Very well.
16:24:19 8 I'll say also for the record that
16:24:21 9 the SEC understands that defense counsel has
16:24:24 10 also sent documents to the stenographer and
16:24:28 11 that Kik may decide to show some of these
16:24:31 12 documents to the witness after the SEC does
16:24:32 13 its questioning.
16:24:34 14 For the record, last week and again
16:24:36 15 yesterday evening, in the interest of efficiency
16:24:40 16 and making this deposition run as smoothly as
16:24:43 17 possible, the SEC asked Kik's counsel for copies
16:24:46 18 of Kik's documents before the deposition begins.
16:24:49 19 Kik's counsel has declined this request and has
16:24:52 20 declined to provide those documents before the
16:24:55 21 SEC asks the witness its questions.
16:24:58 22 MR. WELSH: And for the record, David,

16:24:59 1 Kik -- at this -- at this time, Kik does not
16:25:04 2 intend to show any documents and does not know
16:25:07 3 what the SEC's questions will be. Therefore,
16:25:08 4 it may show a document based on those questions
16:25:11 5 but, at this time, has no documents to share.

16:25:17 6 MR. MENDEL: That's all I have on --
16:25:17 7 on logistics. So we can move forward with
16:25:22 8 questions for Mr. Leibovich.

16:25:25 9 Q. BY MR. MENDEL: Mr. Leibovich, can
16:25:25 10 you please just, again, state your full name
16:25:28 11 and spell it for the record?

16:25:30 12 A. Ilan Leibovich. I-l-a-n.
16:25:33 13 L-e-i-b-o-v-i-c-h.

16:25:40 14 Q. And can you state your home address?
16:25:42 15 A. Yes. Ha-kalir Street 3, Tel Aviv,
16:25:49 16 Israel.

16:25:53 17 Q. Do you have any other personal
16:25:55 18 addresses?

16:25:56 19 A. No.

16:25:59 20 Q. And so you have no addresses in the
16:26:01 21 United States; correct?

16:26:02 22 A. Correct.

16:26:07 1 Q. Also, I wanted to talk with you,

16:26:10 2 Mr. Leibovich, about some guidelines for how

16:26:13 3 the deposition can be conducted.

16:26:16 4 As we've discussed, we have a court

16:26:19 5 reporter or, as we call it also, a stenographer

16:26:24 6 who's in the same room -- room with you and is --

16:26:27 7 is transcribing what we say as -- as the deposition

16:26:30 8 goes forward. And so a few things are important.

16:26:32 9 Please let me finish my question before

16:26:35 10 you start to provide an answer so we're not talking

16:26:38 11 over each other. That will make for a transcript

16:26:42 12 that's easier to read when we're done. Please

16:26:44 13 give audible answers, as opposed to a gesture

16:26:48 14 or a nod of the head. Again, that's for the

16:26:51 15 transcript. It's better to have your verbal

16:26:53 16 response.

16:26:56 17 If you don't understand any of my

16:26:59 18 questions, please by all means let me know.

16:27:02 19 I will try to rephrase the question so that

16:27:05 20 it's more understandable to you. And we can

16:27:10 21 plan on periodic breaks, maybe after about

16:27:15 22 an hour and 15 minutes or an hour and a half.

16:27:18 1 But if you need a break for any reason before
16:27:21 2 then, please let me know, and we can take a
16:27:24 3 break. My only request is that we -- if there's
16:27:28 4 a question pending, please answer the question
16:27:31 5 before we move to a break. Okay?
16:27:34 6 A. Yes.
16:27:34 7 Q. I have to ask you: Are you taking
16:27:43 8 any medication today that could affect your
16:27:46 9 memory?
16:27:47 10 A. No.
16:27:50 11 Q. Is there any reason you can't give
16:27:53 12 full and complete testimony today?
16:27:55 13 A. No.
16:27:59 14 Q. How many languages do you speak?
16:28:03 15 A. Two, maybe three.
16:28:08 16 Q. English? Hebrew?
16:28:09 17 A. English. Hebrew. Yeah.
16:28:12 18 Q. And do you consider yourself fluent
16:28:14 19 in English?
16:28:15 20 A. Yes.
16:28:20 21 Q. Okay. Is English your first language
16:28:22 22 or your -- your second?

16:28:23 1 A. My second.

16:28:24 2 Q. Okay. As I mentioned, if you want me

16:28:27 3 to repeat anything, rephrase anything, or go more

16:28:30 4 slowly, please let me know.

16:28:33 5 A. Sure.

16:28:36 6 Q. What year were you born?

16:28:38 7 A. 1979.

16:28:42 8 Q. Where were you born?

16:28:43 9 A. Rishon Lezion, Israel.

16:28:53 10 Q. Where did you spend your childhood?

16:28:56 11 A. Rishon Lezion.

16:28:57 12 Q. What country?

16:28:57 13 A. Israel.

16:29:02 14 Q. Did you do military service?

16:29:04 15 A. Yes, I did.

16:29:06 16 Q. How many years?

16:29:08 17 A. Three years.

16:29:13 18 Q. Did you go to university or college?

16:29:16 19 A. Yes, I did.

16:29:19 20 Q. Where?

16:29:20 21 A. The Hebrew University in Israel.

16:29:26 22 Q. Did you get any degrees?

16:29:30 1 A. Yes. A bachelor degree.

16:29:34 2 Q. In what?

16:29:36 3 A. Economics and journalism and

16:29:39 4 communication and journalism.

16:29:45 5 Q. And in what year did you receive your

16:29:47 6 degree?

16:29:55 7 A. Somewhere around probably like 2003,

16:30:05 8 2004, something like that.

16:30:13 9 Q. Do you have any other formal training

16:30:16 10 besides having done military service and gotten

16:30:19 11 a degree from Hebrew University?

16:30:22 12 A. No.

16:30:28 13 Q. Can you describe your professional

16:30:31 14 career, at a very general level, before you

16:30:35 15 started working for Kik?

16:30:39 16 A. Yeah. Sure.

16:30:41 17 So basically I started at -- as an

16:30:46 18 affiliate retention manager at a company called

16:30:50 19 888. I was there for a year, maybe a year and

16:30:53 20 a half. Then I started my own company with another

16:31:02 21 founder named Dany Fishel. The company was around

16:31:07 22 marketing and product and stuff like that in the

16:31:12 1 Internet, social sphere industry.

16:31:16 2 About a year, a year and a half of

16:31:19 3 that, the same partner and I started a company

16:31:25 4 called Rounds that we were there for -- for

16:31:31 5 about eight and a half years. And then we

16:31:36 6 were acquired by Kik Interactive around 20 --

16:31:46 7 2016 -- end of 2016, beginning of 2017, I think.

16:31:52 8 And then I was at Kik for another, let's say,

16:31:59 9 maybe a year, year and a bit.

16:32:02 10 You want me to continue after that?

16:32:05 11 Or is that -- is that enough?

16:32:07 12 Q. That's okay for now.

16:32:11 13 You were a co-founder of Rounds?

16:32:13 14 A. Yes, I was.

16:32:17 15 Q. Did you have a title there?

16:32:19 16 A. I was, for a period of time, titled
16:32:25 17 chief operation officer. Then I was titled
16:32:29 18 chief product officer. Then I was titled chief
16:32:31 19 innovation officer, but mostly a co-founder.

16:32:42 20 Q. And then your company was purchased
16:32:44 21 by Kik; correct?

16:32:44 22 A. Yes.

16:32:52 1 Q. What position did you take when you
16:32:56 2 came to Kik?

16:32:57 3 A. I was titled VP product in Tel Aviv,
16:33:01 4 VP product of Kik in Tel Aviv, something like
16:33:05 5 that.

16:33:07 6 Q. That's vice president of product?

16:33:08 7 A. Yes.

16:33:08 8 Q. And when you arrived at Kik -- when
16:33:17 9 your company was bought by Kik, what was Kik's
16:33:22 10 main line of business?

16:33:26 11 A. Kik was a social messaging app. That's
16:33:34 12 it. Messenger.

16:33:37 13 Q. It ran a messenger?

16:33:39 14 A. Yeah.

16:33:44 15 Q. As VP of product, you were based in
16:33:46 16 Israel?

16:33:47 17 A. I was based in Israel. Yes.

16:33:51 18 Q. And what were your responsibilities,
16:33:52 19 then?

16:33:56 20 A. Basically the first thing that we
16:33:59 21 did in the first few months was integrating
16:34:04 22 the Rounds technology or Rounds product or

16:34:09 1 whatever we had in -- in Rounds, which --
16:34:12 2 which was basically video-chat technology.
16:34:19 3 And then I was responsible for
16:34:25 4 various parts of the Kik app, like the sharing
16:34:31 5 of photos and probably the games maybe. Like,
16:34:39 6 I think that it was called "shared experience"
16:34:42 7 or something like that. That was the -- the --
16:34:47 8 the group's name or the responsibility's name,
16:34:50 9 if I remember correctly. But basically a
16:34:53 10 lot of stuff that two or more -- or more --
16:34:55 11 or more people did in the Kik app.

16:35:03 12 Q. As VP of product, to whom did you
16:35:06 13 report at Kik?

16:35:08 14 A. Okay. So that was a little bit --
16:35:09 15 a little bit problematic.

16:35:16 16 Can I give a little bit of -- like,
16:35:21 17 set -- set the stage a little bit about what
16:35:23 18 happened there?

16:35:25 19 Q. Yes.

16:35:26 20 A. Sure.

16:35:27 21 Q. Go ahead. That's fine.

16:35:28 22 A. So basically before we were acquired

16:35:31 1 by Kik, I was -- we had a guy named Eran, Eran
16:35:39 2 Ben-Ari, who was the VP product at Rounds. And
16:35:46 3 I was the chief product officer at Rounds. He
16:35:52 4 didn't -- he didn't report directly to me. He
16:35:54 5 reported to Dany Fishel. We weren't at the best
16:35:58 6 of terms, especially near the end of Rounds and
16:36:06 7 before we got acquired by Kik.

16:36:09 8 And then after Kik acquired Rounds,
16:36:11 9 Kik decided to have Eran as the chief product
16:36:20 10 officer of Kik. And basically we knew that it
16:36:27 11 won't really be possible for me to -- to report
16:36:30 12 to him. But it was -- I think -- if I remember
16:36:32 13 correctly, I think it was sort of a mix. I
16:36:35 14 think that -- that my direct -- the person that
16:36:40 15 I reported to directly was Dany Fishel, that he
16:36:43 16 was my -- my co-founder at Rounds.

16:36:51 17 Q. And what position did Mr. Fishel take
16:36:58 18 on?

16:36:59 19 A. I think he -- he was the president
16:37:00 20 of Kik or something like that.

16:37:06 21 Q. Did you have occasion to work with
16:37:08 22 Mr. Ben-Ari even though you didn't report to

16:37:12 1 him?

16:37:12 2 A. Yeah.

16:37:21 3 Q. Did you work with Mr. Livingston,

16:37:24 4 Kik's CEO?

16:37:27 5 A. Yeah. On some occasions.

16:37:34 6 Q. Did you supervise any people at Kik?

16:37:38 7 A. I -- I didn't hear it correctly.

16:37:41 8 Q. Were you a supervisor at Kik of anybody

16:37:43 9 else?

16:37:45 10 A. I think -- I'm not sure if it was --

16:37:49 11 if it was, you know, written or anything. But

16:37:54 12 probably Tanya Rofman and Elad -- Elad Weizman.

16:38:04 13 Probably they were my directs. I worked with

16:38:11 14 everybody in Tel Aviv, but -- not everybody,

16:38:14 15 but most people in Tel Aviv and some ...

16:38:46 16 (Brief interruption in the proceedings.)

16:38:46 17 THE COURT REPORTER: Excuse me, Counsel.

16:38:46 18 Excuse me. Just a minute. On the --

16:38:46 19 MR. MENDEL: Yes?

16:38:46 20 THE COURT REPORTER: On the Cooley

16:38:46 21 side, there's -- maybe you can turn down your

16:38:46 22 volume. When you guys are moving papers, it's

16:38:46 1 making a lot of static or when you're moving.

16:38:46 2 Sorry about that. Thank you.

16:38:50 3 Q. BY MR. MENDEL: How big was the office

16:38:51 4 in -- in Israel right after the acquisition by

16:38:56 5 Kik?

16:38:57 6 A. I'm sorry. What was the question

16:38:58 7 exactly?

16:39:00 8 Q. How many people worked in Kik's office

16:39:03 9 in Israel when Rounds was acquired by Kik?

16:39:07 10 A. I think that around 30.

16:39:11 11 Q. 30.

16:39:11 12 And that included people from Rounds;

16:39:13 13 right?

16:39:13 14 A. So when we got acquired by Kik, there

16:39:18 15 were only Rounds people. So there -- it was

16:39:21 16 around 30.

16:39:23 17 Q. And of the 30, you might -- you had

16:39:26 18 approximately two people report to you?

16:39:28 19 A. Yes.

16:39:30 20 Q. And you worked with other people besides

16:39:33 21 that; right?

16:39:33 22 A. Yes.

16:39:39 1 Q. At some point, did you learn that Kik
16:39:41 2 was considering the sale of a digital asset or
16:39:44 3 a digital token?

16:39:51 4 A. Yes.

16:39:51 5 Q. How did you first learn that Kik was
16:39:55 6 considering the sale of a digital token?

16:40:00 7 A. I don't remember exactly. I think it
16:40:01 8 was maybe on one of the visits of Ted to Israel.

16:40:09 9 Maybe it was from Dany Fishel. I don't know.

16:40:12 10 Somewhere around the beginning of 2017, I think.

16:40:23 11 Q. Did you at that -- at that time period,
16:40:26 12 in the beginning of 2017, did you participate
16:40:30 13 in discussions at Kik as to whether Kik should
16:40:36 14 sell a token?

16:40:40 15 A. Not exactly. I think it was already
16:40:42 16 decided. It was just talks maybe on how or what.

16:40:53 17 Q. Was there -- Kik eventually did decide
16:40:56 18 to sell a token; correct?

16:40:57 19 A. I guess so. I mean, they -- they did --
16:41:03 20 they did.

16:41:03 21 Q. Well, I guess what I'm -- what I'm
16:41:06 22 asking is: When you first learned about it,

16:41:08 1 the decision had been made? Or was it only
16:41:13 2 a possibility? Do you remember?
16:41:15 3 A. I don't know. I think it was my
16:41:18 4 feeling that it was decided. But I can't
16:41:20 5 say for sure.

16:41:27 6 Q. At this time, did you have any
16:41:29 7 experience with initial coin offerings?

16:41:32 8 A. No, I did not.

16:41:34 9 MR. WELSH: Objection.

16:41:40 10 Q. BY MR. MENDEL: Are you familiar
16:41:40 11 with the term "initial coin offering"?

16:41:46 12 A. I am.

16:41:47 13 Q. Or also known as an ICO?

16:41:53 14 A. Yes.

16:41:54 15 Q. And what's your understanding of
16:41:57 16 what an ICO is?

16:42:00 17 A. As far as I can understand, it's
16:42:01 18 the selling of crypto coins or tokens to
16:42:11 19 people who want to be a part of the holding
16:42:15 20 of the coin.

16:42:19 21 Q. And you had no prior experience with
16:42:21 22 ICOs; correct?

16:42:22 1 A. No, I didn't.

16:42:27 2 Q. Did you have any prior experience with

16:42:29 3 digital tokens?

16:42:32 4 A. No, I didn't.

16:42:35 5 Q. Did you have any prior experience with

16:42:39 6 block chain?

16:42:40 7 A. No, I didn't.

16:42:45 8 Q. After you learned about Kik's plans for

16:42:49 9 a digital token, were you given any responsibilities

16:42:52 10 for developing the token for sale?

16:42:59 11 A. I think that I was helping -- at some

16:43:07 12 point that we decided to launch -- to launch it,

16:43:09 13 I think I was put to facilitate the establishment

16:43:17 14 of the website that did the token distribution

16:43:23 15 event, as it was called at the time. Yeah.

16:43:33 16 Q. Were you assigned anything else besides

16:43:36 17 developing the website?

16:43:41 18 A. Not that I can remember.

16:43:54 19 Q. Were you eventually made aware of

16:43:57 20 a name called Kin?

16:44:00 21 A. Yes, I was.

16:44:05 22 Q. That's -- Kin was the name of the

16:44:07 1 token they offered; correct?

16:44:09 2 A. Yes.

16:44:17 3 Q. And I asked you this question for

16:44:19 4 the token generically.

16:44:23 5 But once -- with the name Kin attached,

16:44:26 6 were you given any responsibilities for Kin?

16:44:39 7 A. Maybe the same as I -- as I said before,

16:44:42 8 the -- the website, the facilitation of the

16:44:45 9 operation of the -- building the website.

16:44:53 10 Q. Did you work with anybody else at Kik

16:44:55 11 on Kin?

16:44:58 12 A. Yes, I did.

16:45:01 13 Q. With whom did you work?

16:45:05 14 A. I think a lot of people. Probably --

16:45:07 15 probably Jairaj, who did the development, I

16:45:15 16 think. Maybe Leonid and Ory. And there --

16:45:29 17 there were people, you know, come -- coming

16:45:31 18 and going. I think Erin was there and -- not

16:45:36 19 there. Like, Erin did some things. Probably

16:45:41 20 Dany. Probably Hayeon or "Hayeon" or something

16:45:49 21 like that. Tanner.

16:45:50 22 Q. Hayeon Kim?

16:45:51 1 A. Yeah. Tanner. Probably Eran. It
16:45:58 2 was two and a half years ago. But I think
16:46:01 3 there's probably more.
16:46:06 4 Q. You said Erin.
16:46:08 5 Is that Erin Clift?
16:46:09 6 A. Sorry?
16:46:10 7 Q. I think you mentioned the name Erin.
16:46:13 8 Is that Erin Clift?
16:46:15 9 A. Yes.
16:46:18 10 Q. And you mentioned Leonid.
16:46:21 11 What's Leonid's last name?
16:46:27 12 A. I don't remember. Something with "B" --
16:46:31 13 Q. Do you remember --
16:46:31 14 A. -- at the beginning.
16:46:34 15 Q. -- you mentioned a name after Leonid?
16:46:34 16 A. Sorry?
16:46:34 17 Q. You mentioned a name after Leonid.
16:46:37 18 Who was that?
16:46:41 19 A. Maybe Ory.
16:46:43 20 Q. Ory. Thank you.
16:46:45 21 Can you spell it?
16:46:47 22 A. O -- O-r-y.

16:47:04 1 Q. Once -- once you started working on
16:47:06 2 Kin, about what percentage of your time did
16:47:08 3 you spend on it?

16:47:16 4 A. I can't say for sure.

16:47:19 5 Q. Would you say it was more than half
16:47:22 6 or less than half?

16:47:24 7 A. Less than half, I think.

16:47:30 8 Q. You had other responsibilities?

16:47:31 9 A. Yes, I did.

16:47:40 10 Q. Would you agree that it was a fair
16:47:42 11 amount of your time?

16:47:45 12 A. Probably at some points, yes.

16:47:50 13 Q. Like over -- at least over 25 percent?

16:47:55 14 A. I -- I think that's fair. Yes.

16:48:00 15 Q. Okay. I'd like to start showing you
16:48:04 16 some documents and asking you some questions
16:48:06 17 about some documents.

16:48:07 18 MR. MENDEL: So if the court reporter
16:48:11 19 could show the witness deposition Exhibit 72,
16:48:15 20 please.

16:48:16 21 THE COURT REPORTER: One moment.

16:48:38 22 Q. BY MR. MENDEL: Mr. Leibovich, can

16:48:38 1 you please --

16:48:39 2 THE COURT REPORTER: One -- one second.

16:48:39 3 Q. BY MR. MENDEL: -- take a moment and

16:48:42 4 look at Exhibit 72?

16:48:42 5 A. Sorry. Can you --

16:48:42 6 Q. Do you have that?

16:48:42 7 A. -- repeat that?

16:48:44 8 Q. Do you have Exhibit 72?

16:48:46 9 A. Yes, I do.

16:48:49 10 Q. Just please take a moment and look

16:48:51 11 at it.

16:48:51 12 A. (Examining.)

16:48:59 13 Q. And while you're looking at it,

16:49:01 14 I'll state for the record that Exhibit 72

16:49:04 15 is an e-mail chain and it's one page. At

16:49:09 16 the top, it states that it's an e-mail from

16:49:14 17 Ilan Leibovich, dated Wednesday, April 22nd --

16:49:16 18 26th, 2017, to Yohay Barski, Y-o-h-a-y, Barski,

16:49:24 19 B-a-r-s-k-i, and "cc" Dany Fishel, subject:

16:49:31 20 "Open Sourcing Kik."

16:49:37 21 So have you had a chance to look

16:49:41 22 at it?

16:49:42 1 A. Yes.

16:49:44 2 Q. Do you recognize this e-mail?

16:49:45 3 A. "Recognize" is a big word. I saw

16:49:51 4 it in the -- in the last week. And I can tell

16:49:58 5 you that I can find the -- the general theme

16:50:03 6 of things familiar but not -- I don't remember

16:50:06 7 the -- the e-mail specifically.

16:50:10 8 Q. Can you -- I'd like to go through

16:50:13 9 certain parts of this e-mail. So can you

16:50:15 10 read with me?

16:50:15 11 A. Can you --

16:50:15 12 THE COURT REPORTER: Counsel, one

16:50:15 13 moment. There's a -- there's a lot of extra

16:50:15 14 noise coming from the Cooley side, the papers,

16:50:15 15 and like it's cutting off the -- the questions.

16:50:15 16 I don't know if you're really close to the mike.

16:50:15 17 MR. WELSH: I'll pull back away from

16:50:15 18 the mike.

16:50:15 19 THE COURT REPORTER: Okay. Thank you.

16:50:15 20 Sorry.

16:50:15 21 MR. MENDEL: Very well.

16:50:49 22 Q. BY MR. MENDEL: There's an initial

16:50:50 1 e-mail on -- embedded on April 26 at 8:39 p.m.

16:50:58 2 from Mr. Barski.

16:50:59 3 Do you see that?

16:51:00 4 A. I do.

16:51:03 5 Q. And he writes:

16:51:04 6 "Regarding open sourcing Kik: I don't

16:51:08 7 think we can just make all of our repositories

16:51:13 8 public and, thus, becoming open source."

16:51:15 9 Do you see that?

16:51:17 10 A. I do.

16:51:19 11 Q. And who is Yohay Barski?

16:51:23 12 A. I remember that at -- at Rounds, he

16:51:25 13 was the mobile -- the -- the head of mobile

16:51:30 14 development or something like that. I don't

16:51:33 15 remember his exact role after Kik acquired

16:51:38 16 us. I think it was something head of mobile

16:51:41 17 development or something like that, that he

16:51:43 18 kept his title or something like that. I

16:51:46 19 don't remember his involvement in Kin as well.

16:51:54 20 Q. Do you -- do you have an understanding

16:51:56 21 of why Mr. Barski is e-mailing about becoming

16:52:00 22 an open source?

16:52:07 1 A. I think that it was something that
16:52:09 2 Ted wanted to do.

16:52:15 3 Q. And what does becoming open source
16:52:18 4 mean generally?

16:52:20 5 A. Basically giving -- as far as
16:52:21 6 I understand -- I'm not a developer myself.
16:52:23 7 I'm a product person. So it's my understanding
16:52:28 8 of open sourcing something. But basically I
16:52:30 9 think it's giving access to all the code that
16:52:36 10 the app is built from.

16:52:45 11 Q. You responded in your e-mail at 10:46
16:52:48 12 a.m. that same day -- I'll just read it into the
16:52:53 13 record what you said.

16:52:55 14 "I agree with you, but Ted is convinced
16:53:00 15 otherwise. And the guys from CoinTree were also
16:53:03 16 convinced this is the right vision to sell to
16:53:04 17 participants, which totally took me by surprise.
16:53:08 18 They think it's a huge vision (much bigger than
16:53:13 19 'currency for teens') and they are extremely
16:53:17 20 excited about it."

16:53:19 21 "They've actually talked about Kik
16:53:20 22 creating Blockchain 3.0. This is a totally

16:53:25 1 different company in my eyes and one that is
16:53:27 2 focused on development and not on product.
16:53:29 3 I don't believe it's the right fit for us."

16:53:34 4 This is what you wrote?

16:53:37 5 A. Yes.

16:53:43 6 Q. When you wrote "they've actually
16:53:47 7 talked about Kik creating Blockchain 3.0,"
16:53:50 8 what does that mean?

16:53:55 9 A. I think -- I don't know who -- who
16:53:59 10 are "they." Probably maybe CoinTree or something
16:54:02 11 like that. I'm just assuming from the -- the
16:54:04 12 e-mail that I've wrote -- that I wrote. But
16:54:07 13 if I remember correctly, there were talks about
16:54:13 14 creating another blockchain, like something more
16:54:17 15 robust or something like that.

16:54:20 16 Q. They would -- they, CoinTree, what --
16:54:23 17 who's CoinTree?

16:54:27 18 A. So we worked with a couple of companies.
16:54:30 19 I don't remember if CoinTree was the first one
16:54:34 20 or the second one. But there were two companies.
16:54:37 21 One was from New York, and one was from Israel.
16:54:40 22 One was CoinFund -- CoinFund. And one was CoinTree.

16:54:49 1 So it's one of them. I think it's the -- I think --
16:54:51 2 I think it's the -- the Tel Aviv -- the -- the
16:54:56 3 Israel company.

16:55:01 4 Q. And the discussion about the blockchain
16:55:02 5 was in regards to Kin; correct?

16:55:07 6 MR. WELSH: Objection.

16:55:11 7 Q. BY MR. MENDEL: You can answer.

16:55:14 8 A. I'm not really sure. But I think that
16:55:17 9 at the time it was not -- not Kin yet. It was
16:55:21 10 just a concept, I think.

16:55:25 11 Q. Was the discussion of the Blockchain
16:55:28 12 3.0 with respect to the digital token that Kik
16:55:32 13 was considering?

16:55:35 14 A. Yes. I think so.

16:55:39 15 Q. You say in your e-mail, quote:
16:55:44 16 "This is a totally different company
16:55:47 17 in my eyes and one that is focused on development
16:55:50 18 and not on product."

16:55:53 19 What did you mean by that?

16:55:55 20 A. Okay. So I think that I remember this.
16:55:58 21 I think that at the time, when we started talking
16:56:02 22 about it, we talked about the -- the tokens, the

16:56:07 1 coin being something of a currency for teens and
16:56:14 2 doing a whole product around that being a token
16:56:18 3 that can be used digitally for teens, something
16:56:22 4 like that, if I remember correctly.

16:56:24 5 And then, when they started talking
16:56:27 6 about the Blockchain 3.0 or more the technology
16:56:31 7 side, it wasn't something that I was passionate
16:56:37 8 about. I was -- I'm a product -- as I said a
16:56:39 9 couple of times, I'm a product person, not a
16:56:41 10 developer. So it -- it was less interesting
16:56:45 11 for me or less -- yeah.

16:56:52 12 Q. What did you mean by the word "us"?

16:56:59 13 A. When did I said that -- did I say that?
16:57:02 14 Sorry.

16:57:08 15 Q. Well, and you say:

16:57:10 16 "I don't believe it's the right fit for
16:57:11 17 us."

16:57:12 18 A. Oh. I think that -- I think that, like,
16:57:17 19 Kik as a company.

16:57:22 20 Q. Did you disagree with Mr. Livingston's
16:57:27 21 vision for the token at this stage when he
16:57:29 22 started -- let me rephrase.

16:57:32 1 To -- to the extent that Mr. Livingston
16:57:41 2 wanted to create open sourcing and a new blockchain,
16:57:46 3 did you disagree with that vision for Kik?
16:57:56 4 A. I think that it wasn't -- I don't remember
16:57:58 5 exactly. But I think that it was something that
16:58:04 6 I didn't believe in. I can't say for sure.
16:58:13 7 Q. And that's because you were more focused
16:58:16 8 on product and not development; correct?
16:58:18 9 A. Yeah.
16:58:19 10 Q. Any other reasons?
16:58:23 11 A. Maybe I -- maybe I thought that the
16:58:24 12 vision is -- is better for being a currency for
16:58:29 13 teens like the --
16:58:33 14 Q. As -- was -- was the -- was the currency
16:58:39 15 for teens, did you understand that to be a vision
16:58:44 16 that Kik did not want to focus on?
16:58:48 17 A. I think there were a few strategies or
16:58:52 18 visions that were considered. And this was one
16:58:54 19 of them and more the technology side of things.
16:58:59 20 The Blockchain 3.0 was another one. I think
16:59:03 21 there were more. I don't remember them right
16:59:06 22 now. But I -- I'm pretty sure there were more.

16:59:22 1 Q. You can turn Exhibit 72 over for now,
16:59:25 2 Mr. Leibovich. I have no more questions on that
16:59:28 3 right now.

16:59:32 4 MR. MENDEL: I would like the court
16:59:34 5 reporter to provide you with deposition Exhibit
16:59:37 6 73, please. And --

16:59:38 7 THE COURT REPORTER: One second.

16:59:38 8 Q. BY MR. MENDEL: Again, please take
16:59:38 9 a look at -- yes. Once -- once she gives it
16:59:38 10 to you, please take a look at it.

17:00:00 11 And I'll just state for the record
17:00:01 12 that the court reporter has handed Mr. Leibovich
17:00:05 13 deposition Exhibit 73. In the investigation
17:00:09 14 leading to this lawsuit, it was marked as
17:00:11 15 investigation Exhibit 120.

17:00:16 16 It's a two-page document. And at the
17:00:19 17 very top of it is an e-mail from somebody named
17:00:24 18 Rod McLeod, M-c-L-e-o-d, on Wednesday, May 24th,
17:00:30 19 2017, to Jake Brukhman, B-r-u-k-h-m-a-n. And
17:00:37 20 there are a number of people on the "cc" line.
17:00:41 21 And the subject is:

17:00:44 22 "Community management responsibilities."

17:00:46 1 And, Mr. Leibovich, just let me know
17:00:48 2 when you've had a chance to look at it.
17:01:01 3 A. (Examining.) Okay.
17:01:32 4 Q. I want to direct your attention to
17:01:35 5 the e-mail on May 24th, 2017, at 1:10 p.m. from
17:01:41 6 Uriel Peled. It's an embedded e-mail.
17:01:44 7 Do you see that?
17:01:45 8 A. I do.
17:01:45 9 Q. Okay. And Mr. -- who was Mr. Peled?
17:01:53 10 A. He was the -- the CoinTree -- maybe
17:01:57 11 the CEO or something like that at CoinTree.
17:01:58 12 That was the Israeli company that I talked
17:02:03 13 about. So it's CoinTree.
17:02:09 14 Q. He wrote:
17:02:10 15 "Hi all. After discussing with
17:02:13 16 Dany, we would like to propose the following
17:02:16 17 responsibilities. We would like to divide
17:02:20 18 into two time zones, 3 topic categories and
17:02:24 19 2 tier support (tier1 = direct answer to
17:02:29 20 community, tier2 = internal help with Q&A
17:02:34 21 for which we have the internal slack group
17:02:37 22 'crypto-faq')."

17:02:41 1 Did I read that correctly?

17:02:45 2 A. Yes.

17:02:48 3 Q. And further down in the same e-mail,

17:02:51 4 Mr. Peled wrote -- there's a -- sort of a --

17:02:56 5 a list. And -- and the first group of words

17:03:00 6 in the list states:

17:03:02 7 "Tel Aviv:"

17:03:03 8 "Product & technology:"

17:03:06 9 "Tier2 - Oded, Ilan" and "Jairaj."

17:03:11 10 (As read.)

17:03:12 11 A. Yeah.

17:03:12 12 Q. Right?

17:03:18 13 And what was Mr. Peled doing here

17:03:22 14 in identifying you under Tier2?

17:03:26 15 MR. WELSH: Objection.

17:03:31 16 Q. BY MR. MENDEL: Do you know why

17:03:33 17 Mr. Peled was listing your name under Tier2?

17:03:41 18 A. I don't remember exactly. I think

17:03:42 19 we had -- I think we had a support team for

17:03:50 20 answering questions with regards to the -- in

17:03:55 21 the website of the token sale. And there were

17:04:03 22 a team, maybe students somewhere -- I think it

17:04:08 1 was in -- in -- I'm pretty sure it was in Tel
17:04:11 2 Aviv. At least some of them were in Tel Aviv.
17:04:12 3 And I probably helped with questions about --
17:04:23 4 from what I can see here, about product and
17:04:27 5 technology. But I don't remember exactly.

17:04:32 6 Q. Oded and Jairaj are -- are Kik
17:04:39 7 employees; correct?

17:04:40 8 A. So Jairaj is a Kik employee. Oded,
17:04:46 9 I think he was a part of CoinTree. And maybe,
17:04:51 10 at some point, they joined Kik in some capacity.
17:04:57 11 But I'm -- I'm not sure if he was an employee
17:05:02 12 at the company at that time.

17:05:07 13 Q. Was this Mr. Peled giving you an
17:05:10 14 assignment?

17:05:13 15 A. Yeah.

17:05:16 16 Q. I'm going to go further down in the
17:05:18 17 same e-mail. And you need to -- it's on the
17:05:23 18 next page, actually, on the lower right-hand
17:05:25 19 corner, do you see those numbers? And there's
17:05:29 20 one that says KIK_00025160.

17:05:34 21 Do you see that?

17:05:35 22 A. On the bottom right?

17:05:37 1 Q. Correct. Is that on your page?

17:05:39 2 A. Yes, it is.

17:05:40 3 Q. Okay. So we call those Bates numbers.

17:05:45 4 It's a way of identifying each page of a document.

17:05:48 5 It's a unique identifying number. So if I ask

17:05:52 6 you to turn to Bates number such and such, that's

17:05:55 7 what I'm referring to.

17:05:57 8 So we're on Bates number ending in 160;

17:06:01 9 correct?

17:06:01 10 A. Yes.

17:06:01 11 Q. Okay. And so up at the top of the page,

17:06:05 12 do you see the paragraph that says:

17:06:07 13 "Key guidelines."

17:06:08 14 A. Yes.

17:06:10 15 Q. And this is still Mr. Peled's e-mail;

17:06:13 16 correct?

17:06:13 17 A. Yes.

17:06:17 18 Q. He writes:

17:06:20 19 "Be very cautious about answering

17:06:23 20 anything related to investments."

17:06:25 21 Correct?

17:06:25 22 A. As far as I can see, yeah.

17:06:31 1 Q. Do you know what is meant by this?

17:06:37 2 A. No. I can stipulate -- I can think

17:06:43 3 that people asked about investments. And it

17:06:54 4 wasn't or we didn't want it to be an investment,

17:06:57 5 something like that.

17:07:02 6 Q. When you say people asked about

17:07:04 7 investments, are -- are you talking about

17:07:08 8 people that you know who asked about investments?

17:07:11 9 A. No. It was people who were interested

17:07:14 10 in participating in the token sale.

17:07:23 11 Q. And how was it -- what's your

17:07:25 12 understanding of why Mr. Peled thought people

17:07:28 13 were asking about investments?

17:07:31 14 MR. WELSH: Objection.

17:07:34 15 Q. BY MR. MENDEL: I'm asking for your

17:07:36 16 understanding of why he was concerned about

17:07:38 17 people asking about investments.

17:07:39 18 Do you know why?

17:07:42 19 MR. WELSH: Objection.

17:07:45 20 Q. BY MR. MENDEL: You can answer the

17:07:46 21 question. That's just Kik's lawyer raising

17:07:50 22 an objection. But you -- you're still allowed

17:07:53 1 to answer.

17:07:54 2 A. Can -- can you --

17:07:55 3 MR. MENDEL: Can the court reporter
17:07:56 4 read back the question?

17:07:58 5 THE COURT REPORTER: One second.

17:07:59 6 (Record read as follows:

17:07:59 7 "QUESTION: I'm asking for your

17:07:36 8 understanding of why he was concerned

17:07:37 9 about people asking about investments."

17:07:39 10 "Do you know why?")

17:08:18 11 THE WITNESS: I don't remember exactly.

17:08:19 12 And I'm not sure -- I think, in all

17:08:31 13 the crypto sphere, there was people thinking

17:08:37 14 that, if they buy certain cryptos, especially

17:08:42 15 at the -- the -- the token sales or the ICO

17:08:47 16 stages, that they would make money. And that's

17:08:52 17 what -- some people, I think -- I don't know

17:08:55 18 or at least I don't -- I don't remember. Some

17:09:00 19 people wanted to participate in order to make

17:09:03 20 money. So they looked at it as investments.

17:09:11 21 Q. BY MR. MENDEL: Were you advised to

17:09:13 22 not use the word "investment"?

17:09:18 1 MR. WELSH: I'm going to caution the
17:09:20 2 witness not to disclose any communications with
17:09:22 3 counsel.

17:09:26 4 THE WITNESS: Advised how? Like, to --
17:09:27 5 for this meeting or in general or -- or in this
17:09:31 6 e-mail or -- the answer is "no" to any of them --
17:09:35 7 to any of those. But maybe you can focus me.

17:09:40 8 Q. BY MR. MENDEL: Okay. Sure.

17:09:42 9 My -- my -- my question is: Did you
17:09:48 10 receive any advice from anyone at Kik not to
17:09:53 11 use the word "investments" when talking about
17:09:55 12 Kin?

17:09:59 13 A. I don't remember exactly. Could be.

17:10:09 14 Q. But your understanding is that there
17:10:10 15 was a concern that people buying Kin tokens
17:10:15 16 would view them as investments?

17:10:18 17 MR. WELSH: Objection.

17:10:23 18 THE WITNESS: I -- I think -- I think
17:10:24 19 there was. Yes.

17:10:31 20 Q. BY MR. MENDEL: Was there a concern
17:10:32 21 that -- or a belief that people would buy Kin
17:10:36 22 tokens with the hope that they would go up in

17:10:39 1 value?

17:10:40 2 MR. WELSH: Objection.

17:10:45 3 THE WITNESS: I -- I think there was.

17:10:46 4 Yes.

17:10:47 5 Q. BY MR. MENDEL: I -- I want to go up

17:11:05 6 the e-mail chain to an e-mail from Mr. Brukhman.

17:11:08 7 So if you could turn it back over to the page

17:11:11 8 ending in 159.

17:11:14 9 A. Sure.

17:11:14 10 Q. Do you see that?

17:11:15 11 A. Yeah.

17:11:17 12 Q. And at 2:05 -- can you -- by the way,

17:11:20 13 can you hear me okay? I'm still hearing some

17:11:24 14 background noise as well.

17:11:26 15 Are you able to hear me, Mr. Leibovich?

17:11:30 16 A. I can.

17:11:30 17 Q. Okay. All right. So on May 24th, 2017,

17:11:33 18 at 2:05 p.m., there's an e-mail from Jake Brukhman.

17:11:37 19 He wrote:

17:11:42 20 "Thanks Uriel, sounds good. Can we

17:11:45 21 make sure to:"

17:11:46 22 "1. Get clear guidelines from Kik's

17:11:48 1 legal team about what is and is not off limits
17:11:52 2 to talk about with respect to the sale" of
17:11:53 3 "investments?" (As read.)
17:11:54 4 That's in the e-mail that I just read;
17:12:00 5 right?
17:12:00 6 A. Yes.
17:12:03 7 Q. Who is Mr. Brukhman?
17:12:07 8 A. So --
17:12:11 9 MR. CADIGAN: And just to be clear,
17:12:11 10 the sentence is [audio fades] ...
17:12:14 11 MR. MENDEL: I did not hear that.
17:12:15 12 Luke, were you -- was somebody --
17:12:19 13 MR. WELSH: Actually -- I'm sorry --
17:12:19 14 just for the record, David, I think the --
17:12:20 15 I think you read the sentence -- you said:
17:12:23 16 "The sale of investments."
17:12:24 17 The -- the actual sentence says:
17:12:25 18 "The sale and investments."
17:12:30 19 Q. BY MR. MENDEL: I'll read it again
17:12:31 20 just to be clear for the record.
17:12:33 21 In Mr. Brukhman's e-mail, he wrote:
17:12:35 22 "Can we" be -- "make sure to:"

17:12:37 1 (As read.)

17:12:37 2 "1. Get clear guidelines from Kik's

17:12:39 3 legal team about what is and is not off limits

17:12:42 4 to talk about with respect to the sale and

17:12:45 5 investments?"

17:12:46 6 Do you know who Mr. Brukhman is?

17:12:51 7 A. Yes.

17:13:01 8 Q. Mr. Leibovich, did you think that,

17:13:02 9 by selling Kin, Kik was selling an investment?

17:13:06 10 A. In -- in my opinion?

17:13:14 11 Q. Yes, in your opinion.

17:13:24 12 A. I'll explain it like this.

17:13:30 13 My vision for it or the way that

17:13:35 14 I saw or I thought that Kik should go towards

17:13:41 15 was making this a coin for, you know, maybe

17:13:47 16 for teens, maybe for something else, maybe

17:13:50 17 a digital coin. A lot of things that you can

17:13:53 18 do with it, so that the vision for it was huge,

17:13:57 19 in my view. And I really -- I loved some of

17:14:02 20 it. But, in my opinion, it was also used for --

17:14:07 21 in -- for some people who participated in the

17:14:13 22 token sale, it was also viewed as an investment.

17:14:19 1 Q. And what's your opinion based on?

17:14:24 2 A. Just a general feeling of things.

17:14:28 3 And because the crypto sphere, the crypto --

17:14:33 4 you know, the people participating in crypto

17:14:37 5 at that time were looking at themselves as

17:14:44 6 investors.

17:14:48 7 Q. Did you know people who had bought

17:14:52 8 crypto currencies?

17:14:53 9 A. Yes.

17:14:54 10 Q. And did you have conversations with

17:14:57 11 them about why they bought crypto currencies?

17:15:01 12 A. Yeah.

17:15:04 13 Q. And is your belief that some people

17:15:08 14 bought them as investments based on your

17:15:11 15 conversations with others?

17:15:12 16 A. Can you repeat the question, please?

17:15:16 17 Q. Is your opinion about crypto currencies

17:15:18 18 and whether they might be investments for certain

17:15:20 19 people, is your opinion based, in part, on your

17:15:23 20 conversations with others who bought crypto

17:15:26 21 currencies?

17:15:27 22 MR. WELSH: Objection.

17:15:31 1 THE WITNESS: Yes.

17:15:35 2 Q. BY MR. MENDEL: Later Ron McLeod

17:15:39 3 responded to a list of people that I -- that

17:15:42 4 are at the top of the e-mail. You'll see the

17:15:45 5 first person is Uriel Peled. Mr. Livingston

17:15:51 6 is on this e-mail, Tanner Philp, Peter Heinke,

17:15:55 7 Dany Fishel, Erin, others, including you.

17:16:00 8 Correct?

17:16:00 9 A. Yes.

17:16:04 10 Q. And he -- and he just wrote:

17:16:07 11 "Makes sense."

17:16:08 12 Right?

17:16:08 13 A. Yes.

17:16:12 14 Q. Right. Okay. That's all my questions

17:16:23 15 for this document. You can turn this one over.

17:16:25 16 Thank you.

17:16:38 17 Are you aware that Kik made a public

17:16:41 18 announcement about Kin?

17:16:45 19 A. Yeah.

17:16:48 20 Q. Do you know approximately when?

17:16:52 21 MR. WELSH: Objection.

17:16:55 22 Q. BY MR. MENDEL: Do you know approximately

17:16:56 1 when Kik made a public announcement for the first
17:17:00 2 time about Kin?

17:17:02 3 A. I think it was around the second quarter
17:17:05 4 of 2017.

17:17:16 5 Q. Did you have any role yourself in the
17:17:18 6 public announcement?

17:17:24 7 A. I don't remember. Maybe you can focus
17:17:27 8 me on something more specific.

17:17:32 9 Q. It's just a general question about
17:17:34 10 whether, when Kik was preparing to make a
17:17:38 11 public announcement, whether you had any
17:17:40 12 roles or responsibilities for it?

17:17:47 13 A. Not -- not -- not something that
17:17:50 14 I can specifically remember. No.

17:17:55 15 MR. WELSH: Can the court reporter
17:17:57 16 please provide the witness with deposition
17:18:00 17 Exhibit 12.

17:18:02 18 THE COURT REPORTER: One moment.

17:18:21 19 He has it.

17:18:25 20 MR. MENDEL: Great.

17:18:28 21 Q. BY MR. MENDEL: Mr. Leibovich,
17:18:28 22 if you could take a minute and familiarize

17:18:31 1 yourself with Exhibit 12, just flip through
17:18:34 2 the pages and let me know when you're done.
17:18:38 3 You don't need to read it word for word.
17:18:41 4 A. (Examining.)
17:18:41 5 Q. And for the record, deposition
17:18:44 6 Exhibit 12 was previously marked as investigation
17:18:48 7 Exhibit 2. It's marked by the Bates numbers
17:18:52 8 KIK000001, ending in page 28. So it's a 28-page
17:19:02 9 document. And on the cover page, it states:
17:19:05 10 "Kin: A decentralized ecosystem
17:19:09 11 of digital services for daily life, position
17:19:11 12 paper."
17:19:13 13 There's also a date of May 2017.
17:19:17 14 A. Okay.
17:19:20 15 Q. Do you recognize Exhibit 12?
17:19:22 16 A. I do.
17:19:25 17 Q. What is it?
17:19:27 18 A. It's the white paper or, as it --
17:19:30 19 it's called, a position paper. I don't remember
17:19:34 20 the name "position paper." I remember the name
17:19:37 21 "white paper."
17:19:38 22 Q. A white paper about what?

17:19:40 1 A. About the digital coin that we wanted
17:19:43 2 to do.

17:19:45 3 Q. About Kik's digital coin?

17:19:47 4 A. Yes.

17:19:49 5 Q. And this is Kik's white paper; correct?

17:19:51 6 A. Yes.

17:19:54 7 Q. Can you turn to page 27.

17:20:02 8 A. Yes.

17:20:06 9 Q. There's a page that says:

17:20:08 10 "Kin Core Team."

17:20:09 11 Right?

17:20:09 12 A. Yes.

17:20:12 13 Q. And there's a number of photographs

17:20:14 14 on this page.

17:20:15 15 Do you -- do you know what the Kin
17:20:17 16 core team was?

17:20:21 17 A. I don't remember exactly. But
17:20:21 18 basically there was this -- the Kin founding
17:20:25 19 team, which was -- which was basically the
17:20:27 20 top management. And there were a lot of other
17:20:30 21 people, like myself, that took part in creating
17:20:35 22 this white paper and helping -- helping write

17:20:40 1 it. And we also wanted to get credit for it.

17:20:43 2 And that's basically how they gave us the credit.

17:20:48 3 Q. You said the "Kin founding team."

17:20:50 4 That -- that starts on page 24; right?

17:20:53 5 A. Yes.

17:21:00 6 Q. And then there is one, two, three, four,

17:21:02 7 five, six, seven people listed under the founding

17:21:08 8 team -- right? -- over the course of three pages.

17:21:12 9 And then on page 27 is the Kin core team.

17:21:18 10 I'm hearing a siren.

17:21:20 11 A. Not from our end.

17:21:23 12 Q. Is that -- that's in Israel?

17:21:25 13 A. No.

17:21:26 14 Q. No? Okay.

17:21:32 15 A. So can you repeat the question?

17:21:35 16 Q. So when you mention the Kin founding

17:21:38 17 team, you're referring to the people listed on

17:21:41 18 pages 24 through 26; right?

17:21:43 19 A. Yes.

17:21:46 20 Q. And then we come to the Kin core team.

17:21:49 21 And that's a picture of you up on the

17:21:52 22 top row -- right? -- Ilan Leibovich?

17:21:56 1 A. Yes.

17:21:57 2 Q. So you were a member of the core team?

17:21:59 3 A. Yes.

17:22:02 4 Q. Did you help write the paper?

17:22:06 5 A. Sorry?

17:22:07 6 Q. Did you help write -- did you help

17:22:10 7 write the white paper?

17:22:12 8 A. A part of it. Yes.

17:22:15 9 Q. Which part did you help write?

17:22:17 10 A. If I remember correctly, the specific

17:22:19 11 part about the integration of Kin inside Kik

17:22:24 12 product.

17:22:30 13 Q. The part starting on page 11?

17:22:48 14 A. Probably more from 12.

17:22:57 15 Q. What is the section starting on page

17:22:59 16 12? Can you describe the subject matter?

17:23:03 17 A. I don't -- I don't think -- let me

17:23:05 18 just maybe rephrase. I -- I'm familiar -- I

17:23:10 19 remember the images. And I remember taking

17:23:17 20 part in doing them in Tel Aviv with a designer.

17:23:22 21 I'm not sure -- and I remember the example use

17:23:26 22 case that -- that comes next to it.

17:23:31 1 But, for example, on page 12, when it
17:23:38 2 says "Ethereum settlement layer," for example,
17:23:42 3 I don't remember having anything to do with that.
17:23:45 4 Maybe the -- so the example use case
17:23:51 5 that appears to the right of the "Kin wallet"
17:23:56 6 and the "Selena Nobez," the "VIP groups," and
17:24:03 7 the "premium" user -- "user-generated content."
17:24:07 8 And also on page 14, the "Shoutout
17:24:11 9 messages" and the "Tipping." And after that,
17:24:14 10 on page 15, the "Bot monetization" and "Brand
17:24:19 11 missions."
17:24:23 12 So yeah, that's the -- the -- the --
17:24:24 13 the example use case text next to the images,
17:24:27 14 I -- and the images themselves I remember.
17:24:33 15 Let me see if I -- if -- I think
17:24:36 16 there was more something general about the
17:24:38 17 product that I was a part of. I haven't gone
17:25:12 18 through -- through everything right now. So
17:25:16 19 I -- I can't say it -- say -- say it for sure.
17:25:19 20 But I think that's pretty much the pages that
17:25:22 21 I was more involved with.
17:25:27 22 Q. And so you -- you were -- you worked

17:25:30 1 on developing the text for these various use
17:25:34 2 cases in the white paper?

17:25:37 3 A. Can you repeat the question? I'm
17:25:38 4 not sure that I agree with the phrasing of
17:25:41 5 it.

17:25:44 6 Q. Were you involved in drafting or
17:25:46 7 writing the descriptions of these use cases
17:25:49 8 in the work -- in the white paper?

17:25:50 9 A. Yes. And -- and the images. Yes.

17:25:54 10 Q. And -- and inserting images.

17:25:56 11 And we're talking about pages -- for
17:25:59 12 the record, it's pages 12, 13, 14, and 15; right?

17:26:03 13 A. Yes.

17:26:09 14 Q. And were these use cases potential or
17:26:14 15 hypothetical in nature?

17:26:16 16 A. They were pretty much hypothetical in
17:26:22 17 nature. Yeah.

17:26:23 18 Q. Were you aware of any of the use cases
17:26:25 19 being developed before the token distribution
17:26:28 20 event?

17:26:29 21 A. Not these examples, no. But there
17:26:32 22 were just -- we didn't know exactly what we

17:26:35 1 would do. But we brainstormed a lot of ideas
17:26:40 2 of what we can do with that. Some of these
17:26:41 3 things I know that we planned doing in some
17:26:44 4 form or -- or another.

17:26:46 5 I mean, it wasn't -- we -- we knew
17:26:48 6 we weren't going to do exactly the VIP groups
17:26:51 7 with the time left and the group limit and so
17:26:54 8 on and so forth. But we did -- we did think
17:26:56 9 that we're going to do, like, limited groups
17:26:59 10 that people will have to pay in order to --
17:27:00 11 to be part of that group. And maybe the admin
17:27:04 12 of that group will get some kind of payment,
17:27:07 13 some kind of a Kin.

17:27:09 14 And the same goes with tipping. And
17:27:11 15 the same goes with the -- the wallets. So that --
17:27:14 16 that's -- that was a few of those ideas. Most
17:27:19 17 of these ideas were part of what we were thinking
17:27:23 18 of doing.

17:27:26 19 Q. When did you think those ideas would
17:27:28 20 be executed or implemented?

17:27:31 21 MR. WELSH: Objection.

17:27:34 22 Q. BY MR. MENDEL: Did you -- did you

17:27:35 1 think any of those ideas would be implemented
17:27:39 2 before the token distribution event?

17:27:41 3 A. I don't remember. I don't think so.
17:27:42 4 Like, the white paper is from May.

17:27:48 5 Q. Why -- why don't you think so?

17:27:51 6 A. Because the white paper is from May.

17:27:52 7 And I don't remember that we developed any of
17:27:57 8 them before that. And the token sale was --
17:28:03 9 I -- I don't remember -- scheduled somewhere,
17:28:06 10 like, in a couple of months or something like
17:28:09 11 that. And I -- I don't think that we were able
17:28:13 12 to develop any of them, like, before.

17:28:20 13 Q. At the time of the white paper, did
17:28:22 14 you have an opinion on whether Kik should do
17:28:26 15 the token sale?

17:28:27 16 A. Can -- can you repeat?

17:28:28 17 MR. WELSH: Objection.

17:28:31 18 Q. BY MR. MENDEL: At the time Kik
17:28:32 19 issued the white paper, did you, Mr. Leibovich,
17:28:37 20 have a personal opinion about whether Kik
17:28:40 21 should sell Kin?

17:28:45 22 A. No, I didn't. I don't remember in

17:28:49 1 any case.

17:28:50 2 Q. Do you -- we're done with Exhibit 12.

17:28:54 3 You can turn that one over, please. Thank you.

17:29:02 4 Do you recall a decision to create

17:29:04 5 something called a minimum viable product for

17:29:07 6 Kin?

17:29:11 7 A. I don't remember. I -- I remember

17:29:12 8 that -- that there was talks about that. I

17:29:15 9 don't remember a decision or something like

17:29:17 10 that. I wasn't part of it.

17:29:19 11 I'll just -- I'll also put everything

17:29:22 12 in perspective. Around this time -- so right

17:29:28 13 now we're probably around May or something like

17:29:31 14 that. Around this time, maybe June, something

17:29:35 15 like that, we started talking -- Eran Ben-Ari

17:29:41 16 didn't want me at the company anymore. So

17:29:44 17 basically it -- we already started talking

17:29:50 18 on how I'm going to be ousted from the company.

17:29:56 19 It took a few months, these talks.

17:29:58 20 And that's probably around the same time when

17:30:03 21 I -- I -- I wasn't involved in a lot of the

17:30:08 22 things that were going on. And in Tel Aviv,

17:30:11 1 there were a lot of things that I wasn't part
17:30:14 2 of.

17:30:15 3 And just for the -- just for the sake
17:30:18 4 of things, probably around -- I think that around
17:30:26 5 September or October, something like that, I --
17:30:28 6 I wasn't officially part of the company anymore.
17:30:32 7 I still came or something like that. But I
17:30:36 8 already started looking for -- it was -- it --
17:30:37 9 it was already -- I -- I already got a letter
17:30:40 10 or something like that that talked about exactly
17:30:42 11 the end -- the -- the end date that I
17:30:46 12 wouldn't be part of the company anymore. So
17:30:49 13 the -- the end date was February 2018, some --
17:30:53 14 sometime in February 2018.

17:30:58 15 But I think that I already -- already
17:31:00 16 got this in writing at around September or October
17:31:05 17 or already started, you know, back and forth these
17:31:10 18 documents, September or October. And the -- the --
17:31:14 19 the talks that we started probably around June,
17:31:19 20 maybe July, maybe May, something like that.

17:31:25 21 So the -- the MVP -- all of that was
17:31:28 22 just to say that I -- I wasn't part of the MVP.

17:31:31 1 I don't remember who decided it and what was
17:31:35 2 decided. I heard -- I mean, I was still at
17:31:39 3 the office at the time. I was still doing
17:31:43 4 stuff related to Kik. I was still having
17:31:46 5 projects related to Kik. I was also part --
17:31:49 6 still part of the -- the -- the website,
17:31:53 7 the Kin website. But I don't remember the --
17:31:58 8 the -- the MVP part of what was decided and who
17:32:03 9 decided and so on.

17:32:06 10 Q. You remember, though, that there was
17:32:08 11 something called a minimum viable product; right?

17:32:11 12 A. I think it was called -- I remember it
17:32:12 13 was called something like IPVL or IPVL2, something
17:32:16 14 like that. I don't remember what was IPVL1. But
17:32:18 15 there was IPVL2, something like that.

17:32:23 16 Q. Initial product launch?

17:32:26 17 A. Initial product V -- I don't remember
17:32:28 18 what the "V" was -- something.

17:32:31 19 Q. But did you understand IPL to be the
17:32:36 20 same as the MVP?

17:32:37 21 MR. WELSH: Objection.

17:32:37 22 THE WITNESS: MP --

17:32:39 1 Q. BY MR. MENDEL: Did you -- did you
17:32:41 2 understand the terms to be used -- did you
17:32:43 3 understand the terms "IPL" and "MVP" to --
17:32:46 4 to be used interchangeably?

17:32:47 5 A. So an MVP --

17:32:49 6 MR. WELSH: Objection.

17:32:50 7 THE WITNESS: Can I -- can I answer
17:32:54 8 that?

17:32:56 9 MR. MENDEL: Yes.

17:32:57 10 MR. WELSH: You can answer.

17:32:58 11 THE WITNESS: So an MVP for a product
17:33:01 12 manager is just a minimum viable product. That's
17:33:04 13 a -- a known term. The IPVL, I don't remember
17:33:09 14 exactly what was -- the initials mean. But
17:33:17 15 I think that probably something like initial
17:33:19 16 product something launch. And yeah, I think
17:33:26 17 it was -- the -- the intent was an MVP, I think.

17:33:33 18 Q. BY MR. MENDEL: What were the reasons
17:33:34 19 for the -- for you and Mr. Ben-Ari not getting
17:33:38 20 along?

17:33:39 21 A. Too many. Where do you want me to
17:33:46 22 start?

17:33:46 1 Q. Sorry?

17:33:47 2 A. Where do you want me to start?

17:33:51 3 Q. Well, can you just say, in a couple

17:33:55 4 sentences, generally what your disagreement was?

17:33:57 5 And then we'll go from there.

17:34:00 6 A. I think that personally we didn't like

17:34:02 7 each other. I think that I didn't see eye to

17:34:05 8 eye with him on how he manages product. I didn't

17:34:09 9 see eye to eye -- eye -- eye to eye with him on

17:34:11 10 his behavior. I think it was -- I felt that it --

17:34:14 11 he was very aggressive in his behavior.

17:34:19 12 And -- and I felt that he sort of

17:34:27 13 put a wedge between me and the other co-founder,

17:34:29 14 Dany Fishel, in Rounds. It was -- it started

17:34:33 15 at Rounds and not just -- and not just Kik. I

17:34:37 16 didn't want him in -- at the company. I didn't

17:34:40 17 want him at -- at Rounds. I had a disagreement

17:34:42 18 with Dany about it. It went on for a very long

17:34:47 19 time. It hurt my -- my relationship with Dany.

17:34:51 20 And it's -- it's a very long -- I can -- I can

17:34:58 21 go on and on. Just let me know how much you

17:35:02 22 want me to get into -- into it.

17:35:05 1 Q. Thank you. I think, for the moment,
17:35:06 2 that's good. We can come back to it later
17:35:10 3 possibly.

17:35:20 4 Do you remember any involvement by
17:35:24 5 you at all in the MVP?

17:35:28 6 A. So I don't remember exactly. But
17:35:30 7 from the documents that I -- I -- I saw in the
17:35:35 8 last couple of weeks, I remember the correspondence
17:35:39 9 with -- what was his name? -- I don't remember
17:35:44 10 right now, but I'm sure you -- you'll remind
17:35:48 11 me -- about the stickers one.

17:35:53 12 So I don't remember exactly. I mean,
17:35:55 13 I probably tried it when I was -- you know,
17:35:58 14 I had the Kik app, I probably tried it, like,
17:36:03 15 key weight or something like that. But I don't
17:36:06 16 remember exactly.

17:36:07 17 Q. Do you know or remember -- do you
17:36:12 18 remember who at Kik was responsible for developing
17:36:16 19 the MVP?

17:36:18 20 MR. WELSH: Objection.

17:36:24 21 THE WITNESS: Answer? Not answer?

17:36:27 22 Q. BY MR. MENDEL: Did you understand there

17:36:29 1 to be people responsible for developing the MVP
17:36:32 2 at Kik?

17:36:32 3 A. I --

17:36:32 4 MR. WELSH: Objection.

17:36:36 5 THE WITNESS: I -- I think --

17:36:37 6 Q. BY MR. MENDEL: Go ahead.

17:36:37 7 A. I think the developer -- if I remember
17:36:38 8 correctly, I'm pretty sure the developer that
17:36:42 9 did most of it was Jairaj.

17:36:50 10 Q. Were there others on the team?

17:36:54 11 A. From what perspective? Development?
Product? Business?

17:37:01 13 Q. Anything to do with the MVP at Kik.

17:37:06 14 A. Again, not sure correctly. But I
17:37:09 15 think Marta is the -- more operations side.
17:37:16 16 I think there was Or -- Or something. Or
17:37:24 17 Azulay from the product side. And Inna from
17:37:32 18 design. And I -- I think that Eran was, like,
17:37:39 19 involved in it in some capacity or another.

17:37:44 20 Q. Who --

17:37:44 21 A. Eran.

17:37:44 22 Q. What was the last one?

17:37:46 1 A. Eran. Sorry.

17:37:58 2 Q. Did you have an understanding of why

17:38:01 3 Kik was creating an MVP for Kin?

17:38:04 4 MR. WELSH: Objection.

17:38:04 5 MR. MENDEL: What's the objection?

17:38:12 6 MR. WELSH: Lacks foundation. Asking

17:38:16 7 him to speculate.

17:38:20 8 MR. MENDEL: Okay. Well, I'll just --

17:38:21 9 I think the question is good. I'm just going --

17:38:23 10 can the court reporter repeat it?

17:38:25 11 THE COURT REPORTER: One second.

17:38:26 12 (Record read as follows:

17:38:26 13 "QUESTION: Did you have an understanding

17:38:26 14 of why Kik was creating an MVP for Kin?")

17:38:44 15 THE WITNESS: So not exactly. And

17:38:47 16 I don't know who decided it or why. I -- I

17:38:51 17 don't -- I wasn't part of these decisions. But

17:38:55 18 I think we wanted to have something meaningful

17:38:59 19 before the launch to have for the participants

17:39:04 20 some way to -- to use the coin, something like

17:39:07 21 that.

17:39:25 22 Q. BY MR. MENDEL: Do you have an

17:39:26 1 understanding of the MVP that was settled
17:39:30 2 upon by Kik?

17:39:32 3 A. If I remember correctly, from the --
17:39:36 4 the e-mails I saw in the last few weeks and
17:39:39 5 from my recollection and from the stuff that
17:39:43 6 I understood at the time, I think there was --
17:39:46 7 I remember the -- a sticker having a few tiers
17:39:54 8 of statuses for the investors or participants
17:39:59 9 in the token sale based on the amount of Kin
17:40:03 10 that they had. I think -- I'm not sure -- that
17:40:07 11 there was a way to move Kins between wallets.
17:40:12 12 And maybe there was a way to use it in the app
17:40:25 13 itself, like, maybe some kind of tipping. I
17:40:28 14 don't remember exactly. But that's pretty much
17:40:31 15 it.

17:40:33 16 Q. You don't have a specific memory of --
17:40:35 17 of stickers being used for tipping in the -- in
17:40:42 18 the app, do you, in the Kik Messenger app?

17:40:45 19 A. Stickers as a tip?

17:40:53 20 Q. You mentioned tipping --

17:40:55 21 A. Yes.

17:40:55 22 Q. -- right?

17:40:55 1 A. Yes.

17:40:57 2 Q. What was your understanding of how

17:41:00 3 tipping would work?

17:41:01 4 A. I think -- I don't remember. But I

17:41:03 5 think that people that had Kin could give Kin

17:41:10 6 to other people in the Kik app.

17:41:14 7 Q. And do you know whether or not that

17:41:17 8 was available by the time of the token distribution

17:41:22 9 event?

17:41:22 10 A. I don't remember. No.

17:41:34 11 Q. Do you know of any [audio fades] of Kin

17:41:38 12 that were available in the Kik Messenger by the

17:41:42 13 time the token distribution event?

17:41:44 14 A. Can -- can you just --

17:41:46 15 MR. WELSH: Objection.

17:41:48 16 THE WITNESS: Can you just repeat it,

17:41:49 17 please?

17:41:51 18 MR. MENDEL: Can you read that -- read

17:41:51 19 back the question?

17:41:53 20 THE COURT REPORTER: One of the words

17:41:53 21 was not --

17:41:53 22 (Brief cellphone interruption.)

17:41:53 1 PARTICIPANT: Sorry.

17:41:53 2 THE COURT REPORTER: The reason he's

17:41:53 3 asking --

17:41:53 4 MR. MENDEL: Can you hear us okay?

17:41:53 5 THE COURT REPORTER: Yes.

17:41:53 6 The reason he's asking you to read

17:41:53 7 it -- to repeat it is because one of the words

17:41:53 8 didn't come through. I'll read what I have,

17:41:53 9 but -- but we're missing a word.

17:41:53 10 (Record read as follows:

17:41:53 11 "QUESTION: Do you know of any" --

17:41:53 12 THE COURT REPORTER: Blank.

17:41:53 13 (Record read as follows:

17:41:53 14 -- "of Kin that were available in

17:41:53 15 the Kik Messenger by the time the token

17:41:53 16 distribution event?")

17:41:53 17 THE COURT REPORTER: We missed a word

17:41:53 18 in there.

17:42:30 19 Q. BY MR. MENDEL: Do you -- I'll re --

17:42:30 20 I'll re-state the question.

17:42:32 21 Do you know of any ways Kin could be

17:42:34 22 used inside of Kik Messenger at the time of the

17:42:37 1 token distribution event?

17:42:40 2 A. I remember the stickers for status,

17:42:43 3 like -- like, almost for sure. But I don't

17:42:47 4 remember if there were -- if there were more.

17:43:08 5 MR. MENDEL: Can the court reporter

17:43:10 6 please show the witness deposition Exhibit 74.

17:43:27 7 THE COURT REPORTER: He has it.

17:43:31 8 Q. BY MR. MENDEL: And can you take

17:43:31 9 a moment and look at Exhibit 74.

17:43:34 10 And for the record, I'll state that

17:43:38 11 this is a one-page document with the Bates

17:43:42 12 number ending in 348 at the lower right-hand

17:43:48 13 corner. It's an e-mail chain. And it's --

17:43:50 14 the top e-mail is from Jairaj, J-a-i-r-a-j,

17:43:54 15 on Sunday, June 11th, 2017, to Eran Ben-Ari,

17:43:59 16 Ilan Leibovich, Inna Belenkey, with a subject

17:44:05 17 of:

17:44:06 18 "Kin MVP into Kik."

17:44:09 19 Let me know when you're done looking

17:44:11 20 at it, Mr. Leibovich.

17:44:13 21 A. (Examining.) Yeah. Sure.

17:44:39 22 Q. So, first, on -- on -- in the embedded

17:44:45 1 e-mail on Saturday, June 10th, Mr. Ben-Ari is
17:44:49 2 writing -- correct? -- at 11:06 p.m. And he
17:44:52 3 says:

17:44:53 4 "Hi all. Jairaj has been working
17:44:56 5 on the Kin MVP, an essential step in having
17:44:58 6 a successful Token Distribution Event (TDE)."

17:45:04 7 And the next paragraph states:

17:45:05 8 "The MVP high-level spec can be
17:45:08 9 found here."

17:45:09 10 And "here" seems to be a link.

17:45:11 11 Do you know if you received this
17:45:13 12 e-mail from Mr. Ben-Ari?

17:45:16 13 A. I don't. I don't -- I don't remember
17:45:18 14 if I received that. It -- it could be that I
17:45:23 15 didn't.

17:45:23 16 Q. Do you remember -- I'm sorry.

17:45:28 17 It could be that what?

17:45:29 18 A. It could be that I didn't. It could
17:45:31 19 be that he didn't send it to me, like, on purpose.

17:45:34 20 But ...

17:45:36 21 Q. He -- do you remember reading the
17:45:40 22 high-level spec?

17:45:45 1 A. No.

17:45:49 2 Q. On June 11th, 2017, at 4:57 p.m.,

17:45:56 3 Jairaj wrote:

17:45:57 4 How --

17:46:00 5 "How-to guide to prep."

17:46:01 6 And -- and listed four items.

17:46:03 7 Do you see that?

17:46:04 8 A. Yes.

17:46:07 9 Q. Do you know if you received that

17:46:08 10 e-mail?

17:46:14 11 A. I don't remember. I don't know.

17:46:17 12 Maybe.

17:46:20 13 Q. Then there's another e-mail at 6:58

17:46:23 14 a.m. on June 11th. Or at least that's what

17:46:29 15 the time stamp says. And it's to -- it's from

17:46:33 16 Jairaj to Mr. Ben-Ari, yourself, Inna Belenkey.

17:46:37 17 And it says:

17:46:39 18 "Can you guys take a look and do your

17:46:42 19 respective sign-offs?"

17:46:44 20 You received that one; right?

17:46:45 21 A. Yeah.

17:46:48 22 Q. Because your name is on the to --

17:46:49 1 "To" line; right?

17:46:50 2 A. Yes.

17:46:55 3 Q. Who is Inna Belenkey? I think you
17:46:58 4 mentioned her. But remind -- remind us who
17:47:01 5 she is.

17:47:01 6 A. She was a designer at the company.

17:47:03 7 She was -- again, just for the framing of things,

17:47:07 8 Marta and Inna are, like, Eran Ben-Ari's -- he

17:47:22 9 brought them to the company. They're, like, his --

17:47:25 10 I -- I don't -- I don't have the words -- like

17:47:31 11 his helpers. Let's -- let's call it like that.

17:47:36 12 Inna is a designer.

17:47:44 13 Q. Do you know why -- do you know why

17:47:46 14 you're being asked to sign off?

17:47:48 15 A. No.

17:47:54 16 Q. You don't know what your respective

17:47:57 17 sign-off responsibility is here?

17:48:00 18 A. No.

17:48:00 19 MR. WELSH: Objection.

17:48:01 20 Q. BY MR. MENDEL: Very well. You can

17:48:02 21 put this one down.

17:48:03 22 A. (Witness complies.)

17:48:05 1 MR. WELSH: We've been going for about
17:48:07 2 an hour and a half now. If you get a moment, we
17:48:09 3 need a break.

17:48:12 4 MR. MENDEL: Now's a good time to take
17:48:14 5 a break. Can we take five minutes?

17:48:14 6 Don't -- don't touch the bridge or the
17:48:18 7 VTC. Just -- we'll just step away for five minutes
17:48:22 8 and resume.

17:48:24 9 Is that okay?

17:48:24 10 THE WITNESS: Sure.

17:48:24 11 MR. MENDEL: Okay. Thank you.

17:48:26 12 THE VIDEOGRAPHER: This is the end of
17:48:27 13 DVD No. 1 in the videotape deposition of Ilan
17:48:30 14 Leibovich. Going off the record at 5:48 p.m.
17:48:40 15 (Recess from 5:48 p.m. to 5:59 p.m.)
17:59:11 16 THE VIDEOGRAPHER: Going back on the
17:59:13 17 video record, the beginning of DVD No. 2 in
17:59:16 18 the videotape deposition of Ilan Leibovich.
17:59:19 19 The time is now 5:59 p.m.
17:59:34 20 MR. MENDEL: Hello again. Can the
17:59:36 21 court reporter please provide Mr. Leibovich
17:59:39 22 with Exhibit No. 75.

17:59:56 1 THE COURT REPORTER: He has it.

17:59:58 2 MR. MENDEL: Thank you.

17:59:59 3 Q. BY MR. MENDEL: Have a look, please,

18:00:00 4 Mr. Leibovich.

18:00:01 5 And then, for the record, I'll say

18:00:05 6 that this is a two-page exhibit, again, No. 75.

18:00:09 7 In the lower right-hand corner is Bates number

18:00:13 8 KIK_00138640 to 41. And on the top of the first

18:00:21 9 page, the header says:

18:00:24 10 "Channel Name: Channel crypto-stickers

18:00:25 11 20170627."

18:00:30 12 A. (Examining.) Yeah.

18:00:36 13 Q. So this document is a series of messages.

18:00:39 14 Do you see that?

18:00:41 15 A. Yes.

18:00:41 16 Q. And do you recognize the conversation

18:00:43 17 in this exhibit?

18:00:51 18 A. From the last couple of weeks that

18:00:52 19 I saw it, I -- I -- yeah, I think I have the

18:00:59 20 general context of it. Yeah.

18:01:05 21 Q. What was the -- where it says "Channel

18:01:07 22 Name," what was the channel on which this discussion

18:01:12 1 took place?

18:01:13 2 A. I think it was on -- on an app called
18:01:16 3 Slack. And there was a channel -- I think that
18:01:22 4 I opened it -- "crypto-stickers." That was the
18:01:24 5 name of the channel. It's a messaging app.

18:01:31 6 Q. And the date was June 26, 2017?

18:01:38 7 A. Yes.

18:01:41 8 Q. What does "crypto-stickers" refer
18:01:43 9 to?

18:01:47 10 A. So that was the stickers that were
18:01:49 11 prepared for the -- for the IPVL or MP -- MVP
18:01:59 12 or something like that.

18:02:02 13 Q. One of the two? It's for the MVP?

18:02:04 14 A. I don't remember calling it an MVP.
18:02:06 15 I remember something along the lines of an
18:02:11 16 IPVL. But I think it's the same things.

18:02:18 17 MR. MENDEL: Actually, can I --
18:02:19 18 can the court reporter please show the
18:02:24 19 witness Exhibit 16.

18:02:44 20 THE COURT REPORTER: He has it.

18:02:44 21 Q. BY MR. MENDEL: Do you recognize
18:02:51 22 Exhibit 16, Mr. Leibovich?

18:02:54 1 For the record, it's a document
18:02:56 2 with the Bates numbers of -- of 37 on the
18:03:00 3 front page to 65 on the last page. In the
18:03:06 4 investigation, it was marked as Exhibit 4.
18:03:07 5 But for the deposition -- for this litigation,
18:03:08 6 it's Exhibit 16. On the front page, it says:
18:03:14 7 "Kik Interactive Inc., Confidential
18:03:14 8 Private Placement Offering Memorandum, Minimum
18:03:18 9 25 Million and Maximum 50 Million." (As read.)
18:03:21 10 Do you -- do you recognize this
18:03:22 11 document at all?
18:03:24 12 A. (Examining.) No. I -- I don't --
18:03:26 13 I don't remember -- no, I don't remember
18:03:29 14 anything like that.
18:03:35 15 Q. Can you turn to page 43.
18:03:41 16 It's actually -- I'm sorry -- page --
18:03:41 17 it says page 3 and Bates number 43.
18:03:48 18 A. Yes.
18:03:52 19 Q. I'm -- I'm looking at the bottom.
18:03:52 20 It says:
18:03:54 21 "Initial Launch of Kin and Kin
18:03:55 22 Ecosystem."

18:03:56 1 Do you see that?

18:03:59 2 A. Yes.

18:04:01 3 Q. Let me just read. It states:

18:04:03 4 "At the time of the public token

18:04:06 5 distribution event, the Kik messaging application

18:04:07 6 will have the following functionality (the

18:04:10 7 'Minimum Viable Product'): A Kik user who owns

18:04:17 8 Kin will be able to create a 'wallet' inside the

18:04:21 9 Kik app. The wallet will be accessible via the

18:04:24 10 settings menu within the Kik messaging application

18:04:25 11 using a private key. Only by entering the private

18:04:29 12 key, a Kik user will be able to see his or her

18:04:33 13 wallet (including the Kik user's Kin balance,

18:04:37 14 send/receive premium stickers functionality and

18:04:42 15 Kin status). Each Kik user (who has a Kik wallet)

18:04:47 16 will be categorized into one of five categories

18:04:50 17 of status based on the number of Kin held by

18:04:54 18 that Kik user."

18:04:56 19 Do you see that?

18:04:56 20 A. Yes.

18:04:56 21 Q. I'll keep reading.

18:05:02 22 "A Kik user (who has a wallet) will

18:05:06 1 be eligible to use premium sticker packs based
18:05:10 2 on his or her status. Premium sticker packs
18:05:12 3 will be created by independent content creators
18:05:14 4 (not brands). A Kik user (who has a wallet)
18:05:23 5 will be able to send any of his or her premium
18:05:26 6 stickers to any Kik user. However, a Kik user
18:05:30 7 who does not have a wallet will only be able
18:05:33 8 to receive premium stickers from a Kik user
18:05:34 9 (who has a wallet)."

18:05:38 10 A. Okay.

18:05:39 11 Q. Does -- have you seen this description
18:05:42 12 before?

18:05:43 13 A. I don't -- I don't remember. No.

18:05:47 14 Q. Does this refresh your memory about
18:05:49 15 the use of the term "MVP" or "minimum viable
18:05:54 16 product"?

18:05:56 17 A. Again, I seriously don't remember
18:05:58 18 this document. I don't think I ever saw it.
18:06:00 19 I think that "MVP" is just from -- you know,
18:06:07 20 just thinking out loud here, I think it --
18:06:09 21 it says here "MVP." But in -- at Kik team,
18:06:13 22 we used the term "IPVL."

18:06:19 1 Q. You can put that one down.

18:06:27 2 Going back to Exhibit 75.

18:06:29 3 A. Yes.

18:06:31 4 Q. We were talking about crypto

18:06:34 5 stickers.

18:06:35 6 A. Yes.

18:06:35 7 Q. And it's your testimony that the --

18:06:37 8 the crypto stickers related to the IPVL?

18:06:41 9 A. Yes.

18:06:55 10 Q. Well, first, Phillip Yang and Hayeon

18:06:59 11 Kim are included in this conversation; correct?

18:07:05 12 A. Yes.

18:07:08 13 Q. And who is Hayeon Kim?

18:07:13 14 A. She was working under Erin Clift,

18:07:16 15 something marketing.

18:07:18 16 Q. Is that in the market -- thank you.

18:07:22 17 At 15:59:46 you wrote:

18:07:28 18 "Hayeon - I understood that marketing

18:07:31 19 wants to give some direction on these stickers."

18:07:34 20 Do you see that?

18:07:38 21 A. Can you direct me again where are you

18:07:40 22 talking?

18:07:43 1 Q. It's on the first page.

18:07:44 2 A. Yes. Yes.

18:07:47 3 Q. It's the sixth message down, starting

18:07:51 4 at June 27th at 15:49 -- 15 --

18:07:56 5 A. Yeah.

18:07:56 6 Q. -- 59:46.

18:07:58 7 A. Yeah, yeah, yeah.

18:08:00 8 Q. That message.

18:08:01 9 A. (Reading.)

18:08:01 10 "I understood that marketing wants

18:08:03 11 to" ...

18:08:03 12 Q. Do you see that?

18:08:04 13 A. Yeah.

18:08:09 14 Q. And it was your understanding that

18:08:11 15 marketing wanted to give direction on the

18:08:14 16 stickers?

18:08:14 17 Is that why you're writing it?

18:08:17 18 A. I don't remember exactly. No. I

18:08:18 19 guess that that was my understanding. I don't

18:08:20 20 remember.

18:08:24 21 Q. Further down, if you skip another

18:08:26 22 three messages, at 16:01:48, where it states

18:08:31 1 at the bottom of the page:

18:08:32 2 "These were the guidelines we have."

18:08:33 3 A. Yeah.

18:08:33 4 Q. Do you see that?

18:08:34 5 A. Yes.

18:08:38 6 Q. And you list five items?

18:08:40 7 A. Yes.

18:08:41 8 Q. Were these -- were these guidelines

18:08:42 9 for the stickers that you had?

18:08:45 10 A. So, again, let me put things a little

18:08:49 11 in -- in perspective. As far as I can remember,

18:08:53 12 I accidentally saw the stickers somewhere. I don't

18:09:02 13 remember where. And in my point of view, they

18:09:07 14 were sexist. And I maybe asked a few people who

18:09:13 15 was in charge, who did them, something like that.

18:09:16 16 I think that I got to Phillip, that

18:09:19 17 he said he's doing that. And then I told him:

18:09:24 18 Look, this is sexist, and we should change it.

18:09:27 19 And then we talked about it. And then I think

18:09:30 20 maybe I added marketing into the mix because

18:09:33 21 I thought that they were responsible or that

18:09:37 22 they would want to put their weight into it

18:09:41 1 as well. I don't remember the guidelines,
18:09:44 2 where they were from. I'm pretty sure that
18:09:48 3 I copied them from somewhere.

18:09:55 4 Q. Why were you looking at the stickers
18:09:58 5 to begin with?

18:09:58 6 A. I don't remember. I just -- I think
18:10:00 7 it's -- like, it was somewhere in Tel Aviv --
18:10:02 8 some -- somewhere, so I saw it. I don't remember
18:10:06 9 where. I like -- somewhere I saw it. And I
18:10:10 10 said -- I said to myself that these are sexist
18:10:15 11 and we shouldn't have these kinds of things on
18:10:20 12 our app. And then I started poking around and
18:10:25 13 seeing who's responsible for it. And that's
18:10:28 14 how I -- that -- again, that's how I remember --
18:10:31 15 remember it.

18:10:38 16 Q. Is it fair to say you were volunteering
18:10:40 17 your -- your opinion?

18:10:41 18 A. Yeah.

18:10:44 19 Q. Where it says -- I'm looking at the
18:10:46 20 five items that you list under "guidelines."
18:10:49 21 "These were the guidelines we had."
18:10:52 22 And under -- No. 5 states:

18:10:53 1 "From Ted - let's try to make the
18:10:57 2 content feel like a way to express your status
18:11:00 3 rather than like premium content. Like when I
18:11:03 4 share this with someone, I'm basically bragging
18:11:07 5 about my status level rather than using great
18:11:09 6 content. If the same content was unlockable
18:11:12 7 for everyone, then it wouldn't have nearly as
18:11:15 8 much value (as opposed to good content which
18:11:19 9 has inherent value regardless of scarcity)."

18:11:26 10 Did I read that correctly?

18:11:28 11 A. Yeah.

18:11:32 12 Q. Where did -- where did you see this
18:11:34 13 guideline to include in the Slack conversation?

18:11:37 14 A. Again, not sure. I'm pretty sure I
18:11:42 15 got it from Ted, after saying to him something
18:11:45 16 like maybe they were sexist or what do you want
18:11:50 17 to do with the stickers or something like that
18:11:52 18 and he said it to me. Maybe -- I don't know --
18:11:54 19 in e-mail or in the Kik app or somewhere. I
18:11:57 20 don't know. I -- it looks like copied -- it
18:11:59 21 looks like I copied it and pasted it. That's --
18:12:02 22 it's not my --

18:12:04 1 Q. You're conveying the message from --
18:12:05 2 I'm -- I'm sorry.
18:12:06 3 Are you conveying a message from the
18:12:09 4 CEO, Mr. Livingston?
18:12:10 5 A. Yes.
18:12:12 6 MR. WELSH: Objection.
18:12:14 7 Q. BY MR. MENDEL: And what's your -- it's
18:12:19 8 your belief that the source of this information
18:12:21 9 or the source of this guideline is Mr. Livingston,
18:12:23 10 the CEO; correct?
18:12:25 11 A. Yes.
18:12:34 12 Q. You can't remember exactly how you got
18:12:36 13 the information from Mr. Livingston?
18:12:39 14 A. No.
18:12:42 15 Q. Did you tell Mr. Livingston that you
18:12:43 16 thought the draft stickers were sexist?
18:12:49 17 A. I don't remember. Could be.
18:12:52 18 Q. Did you have any conversation with
18:12:54 19 Mr. Livingston about the stickers at all?
18:12:57 20 A. I don't remember.
18:13:02 21 Q. How would you communicate with
18:13:04 22 Mr. Livingston?

18:13:10 1 A. So probably e-mail and Slack. And
18:13:13 2 could be on the Kik app itself.

18:13:19 3 Q. How frequent -- frequently did you
18:13:20 4 communicate with Mr. Livingston about anything
18:13:24 5 in June of 2017?

18:13:28 6 A. Not frequently. I don't -- I don't
18:13:31 7 remember. At the end, not frequently at all.
18:13:34 8 At that time -- I think that on -- at the end
18:13:38 9 of June, I'm pretty sure that I was, like,
18:13:42 10 already in talks of leaving the company, of --
18:13:44 11 and I don't think we had frequent conversations.

18:13:56 12 Q. At what point in 2017 did you first
18:13:59 13 believe that you were going to leave the company?

18:14:01 14 A. I think that around that time, maybe
18:14:05 15 May, maybe June, maybe July, something like that,
18:14:06 16 somewhere near the end of Q2, beginning of Q3.

18:14:14 17 Q. And at that time, when you first started
18:14:16 18 to have -- when you first started to think you
18:14:21 19 would leave the company, what were the reasons
18:14:24 20 you started to think that?

18:14:26 21 A. Eran Ben-Ari pretty much said that.

18:14:30 22 Q. Mr. Ben-Ari?

18:14:31 1 A. Yes.

18:14:33 2 Q. Were -- were there any other reasons?

18:14:36 3 A. Not that I'm aware of. No.

18:14:47 4 Q. Looking at this guideline No. 5 that's

18:14:49 5 in your Slack message on June 26th, was this

18:14:56 6 guidance followed by the people at Kik working

18:14:59 7 on the IPVL?

18:15:03 8 MR. WELSH: Objection.

18:15:06 9 Q. BY MR. MENDEL: You can answer.

18:15:07 10 A. I'm not sure I understand the question.

18:15:10 11 Q. Do you know whether the guideline that's

18:15:14 12 included in No. 5 in your -- in your communication,

18:15:17 13 do you know whether that guideline was followed

18:15:23 14 by people at Kik working on the stickers?

18:15:27 15 A. I -- I have no idea.

18:15:29 16 MR. WELSH: Objection.

18:15:29 17 Q. BY MR. MENDEL: Did you have any role

18:15:37 18 in deciding the content of the stickers?

18:15:42 19 A. No.

18:15:46 20 Q. Okay. Please put that one to the side.

18:15:51 21 A. (Witness complies.)

18:15:51 22 MR. MENDEL: And can the court reporter

18:15:52 1 please provide the witness with deposition

18:15:55 2 Exhibit 76. And --

18:16:11 3 THE COURT REPORTER: He has it.

18:16:12 4 MR. MENDEL: -- let me know when

18:16:14 5 you have it and -- thank you.

18:16:16 6 Q. BY MR. MENDEL: And please have a

18:16:17 7 look. For the record, deposition Exhibit 76

18:16:22 8 is a one-page exhibit. It was marked in the

18:16:25 9 investigation as Exhibit 98. It's an e-mail

18:16:29 10 chain. And the top of the -- of the page,

18:16:33 11 it states that it is from Ilan Leibovich on

18:16:36 12 Tuesday, June 27th, 2017, at 8:02 a.m., to

18:16:42 13 Phillip Yang. And the subject is:

18:16:45 14 "Crypto Stickers."

18:16:46 15 A. (Examining.) Yeah.

18:16:51 16 Q. So this is an e-mail chain between

18:16:53 17 you and Mr. Yang; correct?

18:16:54 18 A. Yes.

18:16:55 19 Q. And who was Mr. Yang?

18:17:00 20 A. Something business, partnerships

18:17:05 21 something.

18:17:09 22 Q. He worked at Kik; correct?

18:17:10 1 A. Yes.

18:17:16 2 Q. Was he involved -- was -- was Mr. Yang

18:17:19 3 involved in creating the stickers for the IPVL?

18:17:22 4 A. I think so. Yeah.

18:17:25 5 Q. Looking at the embedded e-mail from

18:17:29 6 Mr. Yang down below on Tuesday, June 27th, 2017,

18:17:32 7 at 5:47 p.m., do you see that?

18:17:37 8 A. Yes.

18:17:39 9 Q. He wrote:

18:17:40 10 Hi --

18:17:40 11 "Hi Ilan. I was wondering if you could

18:17:45 12 share a little" bit "more detail on how you want

18:17:47 13 the crypto stickers to be. I know the ones I

18:17:52 14 sent were a bit too sexist - so I want to ensure

18:17:55 15 our artist can create exactly the right specs

18:17:57 16 and content for you." (As read.)

18:18:00 17 Let me just stop there.

18:18:02 18 So at this point, you had already

18:18:06 19 communicated your view that the stickers then

18:18:09 20 in existence were sexist; right?

18:18:14 21 A. Yeah.

18:18:14 22 Q. And do you know why he's saying he

18:18:17 1 wants to create exactly the right specs and
18:18:21 2 content for you?

18:18:26 3 A. Again, I think -- I -- I sort of --
18:18:27 4 he didn't get -- the way I remember it or see
18:18:33 5 it, like, now is I don't know -- I don't think
18:18:37 6 he got any direct explanation on what to do.

18:18:41 7 And then I saw it somewhere.

18:18:43 8 And I told him: Look, it's too sexist --
18:18:46 9 sexist.

18:18:47 10 And so then he said: Okay, so what
18:18:48 11 do you want it to be? Something like that.

18:18:51 12 Q. So he's -- he's look -- he's looking
18:18:53 13 to you for advice? Is that fair?

18:18:56 14 A. Just because I -- I said something
18:18:58 15 about it. That -- that -- I think -- I don't
18:19:00 16 remember. I don't know. It's, like, probably
18:19:04 17 maybe the first time he -- he heard something
18:19:06 18 about it from someone.

18:19:12 19 Q. It was your understanding that Mr. Yang
18:19:14 20 didn't have a lot of guidance?

18:19:16 21 A. Yes.

18:19:18 22 Q. And you had volunteered some input;

18:19:21 1 correct?

18:19:21 2 A. I had a problem with the -- the tone
18:19:24 3 of -- of them. So I didn't want it to be --

18:19:28 4 Q. You were concerned?

18:19:29 5 A. Sorry?

18:19:32 6 Q. Go ahead. Finish your thought.

18:19:33 7 A. No. I -- I cut you.

18:19:36 8 Q. Okay. You -- you basically were

18:19:41 9 just concerned about the content being sexist,

18:19:43 10 so you volunteered that information?

18:19:46 11 A. Yes.

18:19:47 12 Another thing that I want to put into

18:19:50 13 perspective is -- another thing that I think,

18:19:51 14 like, the -- the state of mind, again, I wanted

18:19:54 15 to be -- I feel like I wanted -- I -- I think --

18:19:58 16 I don't remember. Again, I think that was around

18:20:01 17 the time that the talks started with Eran and

18:20:04 18 I wanted to be more -- to have more ...

18:20:11 19 So there -- there were two things.

18:20:12 20 From -- on one hand, I was frustrated. On --

18:20:15 21 on the other hand, I wanted to be more involved

18:20:18 22 because I felt like they were starting to push

18:20:21 1 me out. So I think that's also one of the
18:20:26 2 reasons that I butted in.

18:20:37 3 Q. Continuing with Mr. Yang's e-mail
18:20:40 4 to you, he wrote in the second full paragraph:

18:20:44 5 "I know it's 'tier based' based off
18:20:48 6 of status, but I think that may be difficult
18:20:51 7 if we're not focused on spending, et cetera.
18:20:54 8 My thoughts were just creating different sets
18:20:56 9 of animal-based stickers or characters with
18:20:58 10 various emotions based off of the top emotions
18:21:03 11 used on our platform by users? Let me know
18:21:08 12 and I can get our artist to redo and get
18:21:11 13 cranking ASAP."

18:21:13 14 A. Okay.

18:21:19 15 Q. And I read that correctly; right?

18:21:25 16 A. Yes.

18:21:30 17 Q. And then you responded to this e-mail.
18:21:32 18 And the time stamp is -- of the e-mail is the
18:21:37 19 same day, June 27th at -- 2017 at 8:02 a.m.;
18:21:43 20 correct?

18:21:44 21 A. Yes.

18:21:45 22 Q. And this is also the same day on

18:21:47 1 which you had the Slack communication or the
18:21:51 2 Slack conversation that's reflected in Exhibit
18:21:54 3 75 that we looked at; correct?

18:21:56 4 A. Yes.

18:21:59 5 Q. Okay. And you say in -- in your first
18:22:07 6 sentence of your e-mail:

18:22:08 7 "Basically it doesn't really matter.

18:22:10 8 The whole point is to make our legal department
18:22:13 9 happy, not the users (who are actually investors
18:22:18 10 and probably could care less that they got a
18:22:21 11 sticker pack for their" \$10,000 "investment
18:22:25 12 into Kin)." (As read.)

18:22:27 13 Did I read that correctly?

18:22:28 14 A. Yes.

18:22:29 15 Q. Does -- does this part of the e-mail
18:22:36 16 accurately reflect your view at the time you
18:22:39 17 wrote it?

18:22:40 18 A. I don't remember. Could be. Yeah.

18:22:52 19 Q. I mean, do you have any reason to
18:22:54 20 think that you didn't mean what you wrote?

18:22:57 21 A. Again, I think that the e-mail is
18:22:59 22 maybe a bit like -- okay. So if you look

18:23:03 1 at the second line -- and that's why I think
18:23:05 2 it's a bit of -- taken out of context. He
18:23:08 3 was asking me for guidelines.

18:23:11 4 And then I told him: Like, look,
18:23:13 5 my only problem was -- with the last set is
18:23:15 6 that they were sexist. That's it. The other
18:23:18 7 thing, I don't care about them. Just that --
18:23:21 8 that's -- I came here to tell you that these --
18:23:24 9 these stickers are sexist.

18:23:25 10 That's -- that's the whole -- what
18:23:27 11 I wanted to say. And that's the whole reason
18:23:31 12 I wanted to get involved, just so it wouldn't
18:23:34 13 be sexist. So the -- everything else I don't
18:23:37 14 care about. That's the way I read this e-mail
18:23:40 15 from, like, my state of mind at the time.

18:23:48 16 Q. Well, when you -- when you wrote
18:23:49 17 "basically it doesn't really matter," by this,
18:23:54 18 are you saying the content of the stickers
18:23:57 19 didn't matter?

18:24:00 20 A. I don't know. I -- I think -- again,
18:24:02 21 I think it was, like: Look -- look, Phillip,
18:24:06 22 the -- the whole reason I'm -- I'm e-mailing --

18:24:09 1 e-mailing -- e-mailing you is because they're
18:24:14 2 sexist. He -- he wanted -- like, he wanted
18:24:16 3 guidelines. And I was, like: Look, they're
18:24:19 4 sexist. Just change it.

18:24:22 5 Q. It didn't matter what the stickers
18:24:25 6 were, just make them not sexist; is that right?

18:24:28 7 Is that what you're trying to say?

18:24:30 8 A. In -- my input on here had -- the --
18:24:35 9 the -- the reason for the -- my input was
18:24:39 10 because they were sexist.

18:24:44 11 Q. You wrote:

18:24:46 12 "The whole" --
18:24:48 13 And -- and still in the first part
18:24:50 14 of the e-mail.

18:24:51 15 A. Yeah.

18:24:51 16 Q. In the second sentence:

18:24:52 17 "The whole point is to make our legal
18:24:54 18 department happy, not the users."

18:24:58 19 Who did you mean by the "users"?

18:25:04 20 A. I think probably -- well, when you say
18:25:09 21 "users," I think they're either the Kik's app or
18:25:14 22 the participants in the token sale.

18:25:29 1 Q. So you wrote:

18:25:33 2 "The whole point" --

18:25:34 3 Or -- or let me ask you: What did you

18:25:36 4 mean, then, by:

18:25:37 5 "The whole point is to make our legal

18:25:40 6 department happy."

18:25:44 7 MR. WELSH: I'm going to caution --

18:25:45 8 I'm going to caution the witness not to divulge

18:25:47 9 advice provided by Kik's counsel or communications

18:25:51 10 with counsel.

18:25:58 11 THE WITNESS: Okay. So I don't remember

18:25:59 12 ever -- ever talking to our legal department,

18:26:01 13 having any connection with them. So I'm not

18:26:08 14 sure exactly. But maybe that was my feeling.

18:26:11 15 But that's -- that's it.

18:26:13 16 Q. BY MR. MENDEL: Well, why would you

18:26:16 17 think that -- well:

18:26:20 18 "The whole point was to make the legal

18:26:23 19 department happy."

18:26:23 20 The whole point of what?

18:26:30 21 A. Again, not sure. I'm not sure why or --

18:26:36 22 like, the way I see it is I think that was my

18:26:44 1 feeling at the time. And also I'm going to put
18:26:49 2 things in perspective. Again, maybe -- maybe it
18:26:55 3 was, well, frustration from the whole situation,
18:26:59 4 my situation, personal situation, not like --
18:27:02 5 not -- not Kik.

18:27:14 6 Q. Was it -- was it your view that the
18:27:16 7 whole point of the IPVL was to make the legal
18:27:20 8 department happy?

18:27:20 9 A. I don't -- I don't remember --

18:27:23 10 MR. WELSH: Objection.

18:27:25 11 THE WITNESS: I don't remember
18:27:26 12 anything like that. No.

18:27:31 13 Q. BY MR. MENDEL: Why did you think
18:27:33 14 it was -- why did you think that the point
18:27:37 15 was not to make the users happy, the users
18:27:39 16 of the Kik Messenger or the participants in
18:27:42 17 the token sale?

18:27:50 18 A. I'm -- I'm -- I'm just reading it
18:27:52 19 again. I don't remember talking to users or
18:28:01 20 potential participants or investors or something
18:28:05 21 like that. I don't remember speaking to the
18:28:07 22 legal -- legal department in any way.

18:28:14 1 But from what I'm reading, that's
18:28:17 2 probably the -- the feeling that I had, maybe
18:28:19 3 because of frustration, maybe because of -- I
18:28:23 4 wanted the -- the -- the MVP or the IPVL, or
18:28:31 5 whatever, to be more than that, to be more of --
18:28:36 6 more product-wise, more integrated, more stuff.
18:28:43 7 Yeah.

18:28:46 8 Q. Was it your view that the IPL or the
18:28:49 9 MVP was inadequate -- inadequate for users?

18:28:54 10 MR. WELSH: Objection.

18:28:54 11 THE WITNESS: I -- I --

18:28:57 12 MR. WELSH: Objection.

18:28:58 13 THE WITNESS: Answering? Should
18:29:04 14 I answer?

18:29:06 15 Q. BY MR. MENDEL: Oh, yes. Please
18:29:08 16 answer.

18:29:09 17 A. I -- I don't remember that that was
18:29:10 18 my point of view. No. I remember that I wanted --
18:29:13 19 wanted it to be more. I think.

18:29:16 20 Q. You wanted what to be more?

18:29:19 21 A. Like, the -- the -- the initial product.
18:29:20 22 I think.

18:29:22 1 Q. You wanted -- you think you wanted it
18:29:24 2 to have more functionality than what was planned
18:29:26 3 with the stickers?

18:29:27 4 A. Yes.

18:29:28 5 MR. WELSH: Objection.

18:29:31 6 Q. BY MR. MENDEL: You wrote in parentheses
18:29:34 7 about:

18:29:35 8 "The users (who are actually investors
18:29:41 9 and probably could care less that they got a
18:29:44 10 sticker pack for their" \$10,000 "investment
18:29:48 11 into Kin)." (As read.)

18:29:49 12 Did you believe that the people who
18:29:51 13 bought Kin were [audio fades] investors?

18:29:55 14 A. Again, please?

18:29:58 15 Q. Did you believe -- looking at the
18:30:00 16 part of your e-mail that's in parentheses, did
18:30:03 17 you believe, when you wrote this e-mail, that
18:30:06 18 the people who would buy Kin tokens in a -- in
18:30:12 19 a sale run by Kik were likely to be investors?

18:30:16 20 A. I think that some of --

18:30:18 21 MR. WELSH: Objection.

18:30:20 22 You can answer.

18:30:21 1 THE WITNESS: I think that I thought
18:30:22 2 that some of them will be. Yeah.

18:30:27 3 Q. BY MR. MENDEL: Did you think most
18:30:28 4 would be investors?

18:30:30 5 A. I don't know. I don't remember.

18:30:35 6 Q. And why did you think that some of
18:30:36 7 them would be investors?

18:30:38 8 A. Again, because some of the people
18:30:40 9 that bought into crypto at that time were
18:30:46 10 referring to themselves as investors and did
18:30:49 11 stuff as investors. And some of them really
18:30:52 12 believed in projects that they were investing
18:30:54 13 in. So there was a whole group and -- yeah.

18:31:05 14 Q. Did you understand that people would
18:31:06 15 be spending \$10,000 or more on Kin through the
18:31:11 16 sale run by Kik?

18:31:13 17 MR. WELSH: Objection.

18:31:17 18 THE WITNESS: I think that, at that
18:31:18 19 time, we had -- we wanted the token sale to
18:31:24 20 allow people to buy tokens up to \$10,000. So
18:31:29 21 I think that's why the "10K" is written here.

18:31:35 22 Q. BY MR. MENDEL: Was it your view

18:31:36 1 that the stickers that Kik was creating would
18:31:40 2 be irrelevant to somebody spending \$10,000
18:31:44 3 on Kin?

18:31:45 4 A. No, it wasn't --

18:31:46 5 MR. WELSH: Objection.

18:31:48 6 THE WITNESS: No, it wasn't my view.

18:31:52 7 Q. BY MR. MENDEL: What was your view
18:31:53 8 about how a person spending \$10,000 on Kin
18:31:58 9 would regard the stickers?

18:32:05 10 A. I'm not sure if I remember. I think,
18:32:06 11 again, there was some frustration, I think, from
18:32:10 12 my end on both views. One, personal. Second,
18:32:16 13 I think I wanted more from the product. I think
18:32:23 14 there -- some -- some people in the crypto are --
18:32:31 15 regarded themselves as investors and expected
18:32:36 16 returns on their participation.

18:32:45 17 Again, this e-mail -- my -- the way
18:32:49 18 I read it is, like, look, I don't care about
18:32:53 19 that. This is what I care about. It's, like,
18:32:56 20 a bit -- a bit out of context. But I think
18:33:00 21 that's -- that's the -- that's the point.

18:33:09 22 Q. You would agree with me that a person

18:33:12 1 who bought Kin in an amount of \$10,000 for an
18:33:16 2 investment purpose would not care about the
18:33:19 3 stickers?

18:33:19 4 MR. WELSH: Objection.

18:33:23 5 THE WITNESS: I can't tell you about --
18:33:23 6 I -- I can't tell you about it.

18:33:27 7 Q. BY MR. MENDEL: Well, you wrote that
18:33:28 8 they -- it was your view, though, as stated,
18:33:31 9 that they could care less; right?

18:33:34 10 What does -- what does that mean,
18:33:37 11 that they could care less?

18:33:39 12 A. Again, the way I read it is more
18:33:42 13 like maybe I could care less. Like, I --
18:33:48 14 I don't care about that; I care about that.

18:33:56 15 Q. You personally could care less about
18:33:59 16 what?

18:34:02 17 A. If it's a sticker pack or if it's --
18:34:03 18 I -- I -- I cared about the -- the sexist
18:34:09 19 stickers. That's -- that's -- that's what
18:34:10 20 I came here to do.

18:34:28 21 Q. Did you discuss your views from
18:34:31 22 this first paragraph in your e-mail with

18:34:33 1 anyone else at Kik?

18:34:40 2 A. I think that the people in the
18:34:42 3 crypto stickers probably received something

18:34:46 4 very similar to what I wrote here. I --

18:34:52 5 I don't remember anything else.

18:34:58 6 Q. Who would that have been?

18:34:59 7 A. Like Erin and -- just because I'm
18:35:03 8 reading it, Erin and Hayeon and Phillip Yang
18:35:09 9 and Jairaj.

18:35:13 10 Q. What are you -- what are you looking
18:35:14 11 at?

18:35:15 12 A. The crypto stickers channel document.

18:35:19 13 Q. 75?

18:35:22 14 A. Yes.

18:35:22 15 Q. Okay. Looking at Exhibit 76 still,
18:35:38 16 you wrote in the third paragraph:

18:35:43 17 "These were the guidelines in Slack:"

18:35:45 18 And then you list five points.

18:35:48 19 This was the same material that you
18:35:50 20 had included in your crypto channel communication
18:35:55 21 in Exhibit 75; right?

18:35:57 22 A. Yeah.

18:35:59 1 Q. So you're repeating it for Mr. Yang?

18:36:03 2 A. I don't remember what came first,

18:36:05 3 the e-mail or the Slack channel. I could

18:36:09 4 be repeating myself. I could be -- I don't

18:36:11 5 remember. But yeah, stating -- stating the

18:36:15 6 same.

18:36:19 7 Q. It could -- could be that you wrote

18:36:21 8 the e-mail first before the Slack channel;

18:36:24 9 right?

18:36:24 10 A. Yeah. Could be.

18:36:38 11 Q. Okay. Put down 75 and 76, please.

18:36:41 12 A. (Witness complies.)

18:36:42 13 MR. MENDEL: Can the court reporter

18:36:43 14 please show the witness Exhibit 77.

18:37:04 15 THE COURT REPORTER: He has it.

18:37:06 16 Q. BY MR. MENDEL: For the record,

18:37:06 17 Exhibit 77 was marked in the investigation as

18:37:09 18 Exhibit 99. And it looks like another Slack

18:37:14 19 communication, two pages. And the top header

18:37:19 20 is:

18:37:20 21 "Channel Name: Channel crypto-stickers

18:37:22 22 20170704."

18:37:27 1 A. (Examining.) Yeah.

18:37:29 2 Q. Mr. Leibovich, let me know when you've

18:37:31 3 seen it.

18:37:31 4 A. Yeah.

18:37:33 5 Q. So this is also a Slack channel?

18:37:36 6 A. I think it's the same one. Yeah.

18:37:40 7 Q. This one has a different date, though.

18:37:43 8 This is July 4th, 2017.

18:37:46 9 A. Yeah.

18:37:47 10 Q. Okay. So it's a little bit later than

18:37:50 11 the other one; right?

18:37:52 12 A. Yeah.

18:37:52 13 Q. Okay. And at the very top, in the

18:38:00 14 first message at 09:09:49, it's you writing

18:38:06 15 to Erin Clift and Hayeon Kim; right?

18:38:10 16 A. Yes.

18:38:11 17 Q. You wrote:

18:38:11 18 "This will get urgent really quickly ...

18:38:12 19 can you give us some direction here?"

18:38:15 20 Right?

18:38:15 21 A. Yes.

18:38:20 22 Q. Why did you write this?

18:38:23 1 A. Do you have the message that was sent
18:38:26 2 before this one?

18:38:29 3 Q. This is all I have.

18:38:41 4 A. Maybe they didn't respond. I don't
18:38:43 5 know. I have no idea.

18:38:48 6 Q. Well, you're still writing about
18:38:50 7 crypto stickers; right?

18:38:51 8 A. Yes. It's the same -- I think it's
18:38:52 9 the same topic as before.

18:38:58 10 Q. Ms. Clift, Erin, wrote to you in --
18:39:01 11 in response at 11:56:17:

18:39:06 12 "I have not seen a brief for this
18:39:08 13 content."

18:39:09 14 Right? Do you see that?

18:39:09 15 A. Yes.

18:39:11 16 Q. In the third sentence of that same
18:39:14 17 paragraph, she writes:

18:39:15 18 "If you do have a brief - feel free
18:39:18 19 to share and I can contribute to it. If the
18:39:22 20 audience for this is crypto" invest -- "investors,
18:39:23 21 I would also encourage you to spend a bit of
18:39:31 22 time looking at ways they express their status

18:39:31 1 on other platforms - or how they may understand
18:39:34 2 status from their everyday lives." (As read.)
18:39:38 3 Do you see that?
18:39:38 4 A. Yes.
18:39:41 5 Q. What was a "brief" referring to? Do
18:39:50 6 you know?
18:39:50 7 A. Can -- can you point me where the --
18:39:52 8 the word is? I don't understand the word.
18:39:54 9 Can -- can you --
18:39:56 10 Q. Well, at -- at the -- at the first
18:39:58 11 sentence of the paragraph says:
18:39:59 12 "I have not" --
18:40:00 13 A. Oh, the "brief."
18:40:01 14 Q. (Reading.)
18:40:01 15 -- "seen a brief for this" --
18:40:01 16 A. Yeah.
18:40:02 17 Q. (Reading.)
18:40:02 18 -- "content."
18:40:02 19 A. Okay.
18:40:03 20 Q. What -- do you know what she meant
18:40:05 21 by "brief"?
18:40:06 22 A. So I think it's very similar to the

18:40:08 1 guidelines that I wrote in the -- the previous
18:40:12 2 correspondence in the same channel, like unique,
18:40:15 3 never used in Kik before, not branded, and so
18:40:19 4 on. That was probably the point -- the point
18:40:24 5 of time that I regretted even saying something
18:40:28 6 about that because it became, like, too -- too
18:40:31 7 much of a procedure -- procedure for me.

18:40:33 8 But I think that Erin -- I thought
18:40:35 9 that Erin was in -- in charge of it. And then
18:40:39 10 she says she didn't see a brief for it and, if
18:40:42 11 you have a brief, then please tell us.

18:40:45 12 And I was, like, I don't have the brief.
18:40:47 13 I didn't write the brief. Who wrote the brief?
18:40:50 14 I told her:

18:40:52 15 "Who should provide the brief?"

18:40:54 16 Like -- like, take -- take this off
18:40:55 17 me. Like, I'm -- I'm -- I'm sorry I even got
18:40:57 18 into it. But that's pretty much what I get
18:41:00 19 from the correspondence here.

18:41:06 20 Q. She writes:

18:41:07 21 "If the audience for this is crypto
18:41:08 22 investors, I would also encourage you to spend

18:41:10 1 a bit of time looking at ways they express
18:41:13 2 their status on other platforms."

18:41:16 3 So she's referring you to do some
18:41:21 4 additional work based on your belief that
18:41:24 5 they're crypto investors; correct?

18:41:26 6 A. So --

18:41:26 7 MR. WELSH: Objection.

18:41:29 8 THE WITNESS: Again, the whole
18:41:30 9 reason -- as far as I can remember, the whole
18:41:33 10 reason that I opened this -- I think I opened
18:41:36 11 this Slack channel was, like: People, we have
18:41:41 12 sexist stickers. We shouldn't do them. And
18:41:45 13 then Phillip asked for guidance.

18:41:47 14 And Erin said: Okay, where's the
18:41:50 15 brief?

18:41:50 16 And I said, like: I don't know who's --
18:41:50 17 I don't -- I didn't have the brief. I didn't
18:41:52 18 do that.

18:41:52 19 Like, and -- and then she started,
18:41:55 20 like, if this is -- if this is that, if this
18:41:56 21 is that and this is ...

18:41:57 22 And I -- and I'm, like: There was

18:41:59 1 no brief. Who should provide the -- the brief?

18:42:04 2 That's pretty much it. I don't know

18:42:07 3 what's redacted here. But that's from --

18:42:10 4 Q. BY MR. MENDEL: That's at 12, oh --

18:42:10 5 that's at 12 -- 12:00 o'clock, oh, six, you

18:42:15 6 wrote:

18:42:15 7 "There was no brief other than what

18:42:16 8 I wrote above."

18:42:16 9 Right?

18:42:18 10 A. Yeah. That's -- again, as far as I

18:42:19 11 can -- could understand from -- probably because,

18:42:23 12 like Phillip said, there was no brief somewhere.

18:42:26 13 I don't remember.

18:42:34 14 Q. She wrote -- Erin wrote at 12:02:11:

18:42:39 15 "To be honest - I don't think there

18:42:41 16 is time for that at this point."

18:42:46 17 A. Yes.

18:42:46 18 Q. Right?

18:42:48 19 A. Yes.

18:42:50 20 Q. She thought that there was -- there

18:42:51 21 wasn't time to do a brief? Is that what she's

18:42:54 22 saying?

18:42:57 1 A. I don't know. Maybe -- maybe a change
18:43:01 2 in the -- the -- the stickers right now. Maybe
18:43:06 3 the brief, who should -- I don't know.
18:43:22 4 Q. Can you go to the second page?
18:43:30 5 A. Yes.
18:43:31 6 Q. There's a -- there's a message -- it
18:43:37 7 looks to be from you --
18:43:40 8 A. Yeah.
18:43:40 9 Q. -- at 12:07. But it's been redacted.
18:43:45 10 That means the information wasn't provided to
18:43:49 11 the SEC.
18:43:50 12 A. Okay.
18:43:50 13 Q. Is it your testimony that you never
18:43:52 14 talked to any lawyers about the stickers?
18:43:55 15 A. As far as I can remember, I didn't.
18:44:02 16 Q. What did you say in -- in this portion
18:44:06 17 of your -- your communication, then?
18:44:07 18 A. In the redacted?
18:44:10 19 MR. WELSH: Objection.
18:44:10 20 Instruct the witness -- yeah.
18:44:11 21 Objection.
18:44:11 22 Instruct the witness not to answer.

18:44:16 1 Q. BY MR. MENDEL: Did you ever seek any
18:44:18 2 legal advice from any lawyer about the stickers?
18:44:24 3 A. I -- I really don't remember. No.
18:44:31 4 Q. And you don't recall ever getting any
18:44:34 5 legal advice from a lawyer about the stickers;
18:44:36 6 correct?
18:44:36 7 A. Yeah. Correct.
18:44:41 8 Q. Do you remember any employee at Kik
18:44:45 9 relaying to you advice from a lawyer --
18:44:51 10 A. No.
18:44:51 11 Q. -- about the -- about the crypto
18:44:52 12 stickers?
18:44:54 13 A. No, I do not.
18:45:03 14 Q. Do you have any memory of what it
18:45:06 15 is that you wrote here?
18:45:08 16 A. Zero.
18:45:18 17 Q. You can turn Exhibit 77 over.
18:45:22 18 A. (Witness complies.)
18:45:22 19 MR. MENDEL: Can the court reporter
18:45:23 20 please show the witness deposition Exhibit 78.
18:45:37 21 THE COURT REPORTER: He has it.
18:45:39 22 MR. MENDEL: Thank you.

18:45:40 1 Q. BY MR. MENDEL: And this is deposition
18:45:42 2 Exhibit 78, investigation Exhibit 100. It's a
18:45:47 3 one-page exhibit, showing an e-mail chain between
18:45:53 4 Mr. Leibovich on July 2nd, 2017, with Phillip
18:45:56 5 Yang titled:
18:45:58 6 "Crypto Sticker Concepts."
18:46:00 7 A. (Examining.) Yeah.
18:46:01 8 Q. Do -- do you see that?
18:46:02 9 A. Yes.
18:46:02 10 Q. And Mr. Yang wrote to you at 11:05 p.m.
18:46:07 11 on July 5th:
18:46:08 12 "Hi, Ilan. It seems there's no real
18:46:11 13 sense of direction as to which ... our crypto
18:46:13 14 stickers" ... (As read.)
18:46:14 15 I'm sorry. Let me state it again.
18:46:15 16 "It seems there's no real sense of
18:46:17 17 direction as to which way our crypto stickers
18:46:19 18 should go, so I took a stab at getting some
18:46:22 19 concepts jotted down."
18:46:24 20 And you respond on July 6:
18:46:26 21 "Not sure I understand. We'll
18:46:28 22 talk about it today in our meeting."

18:46:31 1 My question is: Do you know what
18:46:33 2 Mr. Yang was talking about in terms of not
18:46:35 3 having a sense of direction?

18:46:37 4 A. No. I think that -- again, as
18:46:45 5 I stated -- stated before, I think that
18:46:48 6 he got no direction and he did something.
18:46:50 7 And, again, my point of view was about
18:46:54 8 the sexist stickers.

18:47:02 9 Q. Well -- well, this is July 6th;
18:47:04 10 right? So this is -- this is a number of
18:47:14 11 days after your communications about the
18:47:19 12 stickers being sexist, you'll recall, if
18:47:22 13 you pick up deposition Exhibit 76 again --

18:47:26 14 A. Yeah.

18:47:26 15 Q. -- your deposition Exhibit 76.

18:47:29 16 A. Yeah.

18:47:29 17 Q. All right. That was on July 20 --
18:47:30 18 I'm sorry -- June 27th, 2017. And now we're --
18:47:36 19 deposition Exhibit 78 is an e-mail from July 6.

18:47:39 20 Do you still have concern on July 6
18:47:41 21 about the sexist stickers? It looks like you're --
18:47:43 22 I'll stop there.

18:47:46 1 Do you still have concern about sexist
18:47:49 2 stickers on July 6th?

18:47:53 3 A. I think it's the same topic. I mean,
18:47:55 4 I think that it's -- first of all, it's just two
18:47:59 5 weeks, like a week and a half maybe. Probably
18:48:04 6 he didn't have -- he still didn't have more --
18:48:07 7 more sets or more directions to -- on what to
18:48:12 8 do.

18:48:13 9 From the way that I understand this
18:48:15 10 e-mail, he probably sent me some kinds of concepts.
18:48:20 11 Again, it's -- I think, again, that it was still
18:48:31 12 in order to solve the -- just the sexist part.

18:48:42 13 Q. Can you turn that one over, please?
18:48:45 14 We're done with 78.

18:48:47 15 A. Sure.

18:48:48 16 MR. MENDEL: Let me -- can the court
18:48:50 17 reporter show the witness deposition Exhibits
18:48:54 18 8 and 9.

18:49:09 19 THE COURT REPORTER: He has them.

18:49:13 20 THE WITNESS: (Examining.) Yeah.

18:49:14 21 Q. BY MR. MENDEL: And for the -- for
18:49:14 22 the record, these are pictures of an animal

18:49:20 1 in different scenes; right?

18:49:22 2 A. (Examining.) Yeah.

18:49:25 3 Q. Do you know what the animal is?

18:49:27 4 A. Sorry?

18:49:28 5 Q. Do you know what the animal being

18:49:30 6 shown in Exhibits 8 and 9 are -- is?

18:49:33 7 A. No.

18:49:36 8 Q. Is it -- okay. All right.

18:49:38 9 Do you -- do you recognize Exhibits

18:49:40 10 8 and 9 as stickers that were created for the --

18:49:43 11 for the MVP?

18:49:47 12 A. There's something about them that

18:49:49 13 looks familiar. But I don't remember them

18:49:52 14 exactly. No.

18:49:53 15 Q. You don't remember honey badgers

18:49:56 16 being a subject of the stickers?

18:49:58 17 A. No.

18:50:02 18 Q. You can put those down.

18:50:05 19 A. (Witness complies.)

18:50:09 20 Q. Do you know whether Kik marketed

18:50:12 21 the MVP before the token distribution event?

18:50:18 22 MR. WELSH: Objection.

18:50:21 1 THE WITNESS: Marketed?

18:50:24 2 Q. BY MR. MENDEL: Do you know whether

18:50:25 3 Kik communicated to the public about the MVP

18:50:31 4 before the token distribution event?

18:50:36 5 A. Not that I can remember. No.

18:50:45 6 Q. Do you know whether Kik communicated

18:50:47 7 to the public about the IPVL before the token

18:50:51 8 distribution event?

18:50:53 9 A. No, I don't.

18:50:53 10 Q. Do you recall when the token distribution

18:51:00 11 event took place?

18:51:08 12 A. Not exactly. But I think around the

18:51:11 13 end of Q3 2017. Yes. September. Something

18:51:22 14 September.

18:51:23 15 Q. September of 2017?

18:51:24 16 A. Yes. Maybe. Something like that.

18:51:28 17 Q. Did -- did you have a role in the

18:51:30 18 token distribution event?

18:51:32 19 A. I did. Yes.

18:51:35 20 Q. What did you do?

18:51:36 21 A. I facilitated with the operation of

18:51:41 22 building the website.

18:51:48 1 Q. Did you have any other responsibilities?

18:51:54 2 A. Like what? Not -- not that I can

18:51:56 3 remember. But maybe refresh my memory.

18:52:02 4 Q. All you can remember now is the website?

18:52:05 5 A. Yeah.

18:52:11 6 MR. MENDEL: Can the court reporter

18:52:12 7 please show the witness Exhibit 79.

18:52:32 8 THE COURT REPORTER: He has it.

18:52:37 9 Q. BY MR. MENDEL: Can you take a moment

18:52:38 10 and flip through this exhibit, please?

18:52:42 11 A. Yeah. (Examining.)

18:52:42 12 Q. For the record, it's deposition Exhibit

18:52:43 13 79 marked by the Bates numbers KIK_00026023 through

18:52:55 14 KIK_00026025. So it's a three-page e-mail chain.

18:53:03 15 And the first e-mail at the front of the document

18:53:08 16 is from Ilan Leibovich on Friday, September 8th,

18:53:10 17 2017, at 11:59 a.m., to Jairaj and a number of

18:53:15 18 other people on the "cc" line. The subject line

18:53:17 19 is:

18:53:19 20 "Final Alignment for Pre/During/Post

18:53:21 21 TDE Web Designs."

18:53:24 22 A. Yeah.

18:53:26 1 Q. Do you recognize this e-mail chain?

18:53:30 2 A. In general, yes.

18:53:34 3 Q. Can you go to page 2, which is marked

18:53:40 4 by the Bates numbers 02 -- ending in 024.

18:53:45 5 A. Yes.

18:53:49 6 Q. And there's a -- an e-mail from you

18:53:52 7 on September 7th, 2017, at 7:14, midway through

18:53:58 8 the page from Ilan Leibovich.

18:54:01 9 Do you see that, starting with:

18:54:02 10 "Hi all."

18:54:03 11 A. Yeah.

18:54:06 12 Q. It says:

18:54:07 13 "Hi all. Please see attached and below."

18:54:09 14 In your -- and in your e-mail, you list

18:54:12 15 six items.

18:54:14 16 A. Yeah.

18:54:16 17 Q. Are you identifying certain people for

18:54:19 18 tasks in this e-mail?

18:54:28 19 A. More of questions. Yes.

18:54:31 20 Q. Are you taking a coordinating role for

18:54:33 21 the website?

18:54:34 22 A. Yeah.

18:54:39 1 Q. Under Item 1 in your e-mail --

18:54:45 2 A. Yeah.

18:54:45 3 Q. -- it says:

18:54:47 4 "Registration Ended.png."

18:54:50 5 Do you see that?

18:54:51 6 A. Yeah.

18:54:51 7 Q. The third bullet says:

18:54:53 8 "Leonid - we need the PDF for the 'User'"

18:54:56 9 Registration "'Guide.'" (As read.)

18:54:57 10 What were you referring to?

18:54:58 11 MR. WELSH: I'm sorry. For the record,

18:55:01 12 did you mean "User Participation Guide"?

18:55:05 13 Q. BY MR. MENDEL: I'm on the third bullet

18:55:08 14 under:

18:55:08 15 "Registration Ended."

18:55:11 16 Mr. Leibovich, do you see that?

18:55:12 17 A. Yeah.

18:55:21 18 Q. What are you referring to by:

18:55:24 19 "PDF for the 'User'" Registration

18:55:25 20 "'Guide.'" (As read.)

18:55:28 21 A. It's just as a -- just for the record,

18:55:29 22 it says "User Participation Guide" -- guide and

18:55:32 1 not "User Registration Guide."

18:55:36 2 Q. Thank you for clarifying. I misspoke.

18:55:38 3 I meant to say "User Participation Guide." Thank

18:55:42 4 you.

18:55:42 5 A. I think -- well, it's the website. So

18:55:48 6 the "Registration Ended.png" is an image that I

18:55:53 7 attached to the e-mail. After the registration

18:55:56 8 for the TDE, for the token distribution event

18:55:59 9 ended, this was the image that we wanted to show.

18:56:02 10 There was a link for a User Participation Guide

18:56:07 11 that should have opened a PDF file. I don't

18:56:12 12 remember exactly what was in that. I'm guessing

18:56:16 13 how a user can participate in the upcoming TDE.

18:56:33 14 MR. MENDEL: Can the court reporter

18:56:34 15 show the witness deposition Exhibit 80, please.

18:56:54 16 THE COURT REPORTER: He has it.

18:57:00 17 Q. BY MR. MENDEL: And for the record,

18:57:00 18 deposition Exhibit 80 states on the -- it's

18:57:06 19 a multi-page document previously marked as

18:57:09 20 investigation Exhibit 9. It's pages KIK000098

18:57:18 21 through 108. On the first page, it says:

18:57:23 22 "User Registration Guide."

18:57:24 1 Dated August 2017.

18:57:26 2 Is this the document that you referred

18:57:29 3 to as a User Participation Guide?

18:57:31 4 A. Yeah, probably.

18:57:35 5 Q. So they're just titled differently;

18:57:38 6 correct?

18:57:38 7 A. Yeah.

18:57:39 8 Q. Okay. Looking at deposition Exhibit

18:57:47 9 80, it's dated August 2017; correct?

18:57:53 10 A. Yes.

18:57:57 11 Q. Did you have any role in reviewing

18:57:59 12 the User Registration Guide marked as Exhibit

18:58:02 13 80?

18:58:03 14 A. I'm pretty sure that I saw it at

18:58:06 15 least once, maybe more. I think that the

18:58:09 16 images in it I facilitated in creating them

18:58:15 17 with the designer in Tel Aviv. I don't think

18:58:19 18 that the text here I had anything to do with

18:58:23 19 it. But I probably read it, at least went

18:58:27 20 over it in one way or another.

18:58:33 21 Q. Was this document made available to

18:58:35 22 all the participants in the token distribution

18:58:37 1 event?

18:58:38 2 A. I think so.

18:58:42 3 Q. Was it made available on the website?

18:58:45 4 A. I think so. Yeah.

18:58:48 5 Q. That was one of your objectives --

18:58:49 6 right? -- was to include this document in

18:58:52 7 the website?

18:58:53 8 A. My objective?

18:58:57 9 Q. One of the things that you were

18:58:58 10 responsible for in designing the website

18:59:01 11 was to include the User Registration Guide;

18:59:03 12 correct?

18:59:03 13 A. I don't think -- it's not, like,

18:59:07 14 my objective or something like that. I

18:59:10 15 think that the website -- I don't remember

18:59:13 16 who, but someone defined what needs to be

18:59:17 17 there. And one of the things that needed

18:59:21 18 to be there was some kind of how to participate.

18:59:24 19 And from the e-mail here, I think that Leonid

18:59:31 20 was the one who was responsible of creating

18:59:34 21 it. So I'm asking him to -- to make it or

18:59:40 22 where is it or something like that.

18:59:50 1 Q. What part of the organization was
18:59:51 2 Leonid in?

18:59:54 3 A. So Leonid was part of CoinTree,
19:00:00 4 coin -- CoinTree. Again, there was some
19:00:06 5 point that there were talks to -- to have
19:00:11 6 the people from CoinTree join Kik, something
19:00:14 7 like that. I don't remember at this stage
19:00:17 8 what exactly, if it was at CoinTree or at
19:00:20 9 Rounds. I think it -- it was CoinTree.

19:00:32 10 Q. Looking on page 100 --

19:00:35 11 A. One --

19:00:35 12 Q. -- or page 3 of the guide, do you
19:00:38 13 see that "Introduction" at the top?

19:00:40 14 A. Are you with me?

19:00:41 15 A. I'm not sure. No. Yeah.

19:00:43 16 A. "Introduction"?

19:00:45 17 Q. Yes.

19:00:46 18 A. Yes.

19:00:47 19 Q. And at the -- in the lower right-hand
19:00:48 20 corner, it should say "3."

19:00:53 21 A. Yeah.

19:00:55 22 Q. Okay. And the second paragraph:

19:00:59 1 "We are excited to take the next
19:01:01 2 steps in bringing Kin to life."
19:01:03 3 Do you see that?
19:01:03 4 A. Yeah.
19:01:05 5 Q. And the next sentence states:
19:01:08 6 "The Kin token offering presents
19:01:09 7 a unique opportunity for crypto investors,
19:01:12 8 as Kin will offer mainstream audiences a
19:01:12 9 chance to instantly interact with a crypto
19:01:17 10 currency."
19:01:18 11 Did I read that correctly?
19:01:20 12 A. Yes.
19:01:22 13 Q. Do you know who drafted that sentence?
19:01:25 14 A. No.
19:01:27 15 Q. Did you talk to anyone about that
19:01:29 16 sentence?
19:01:32 17 A. Not -- not that I can remember. No.
19:01:38 18 Q. Did you agree with it?
19:01:43 19 A. I don't -- I don't remember.
19:01:50 20 Q. Looking down the page under "How to
19:01:53 21 Register," under No. 3, do you see that?
19:01:57 22 A. No. 3?

19:01:59 1 Q. Where it says:

19:02:01 2 "During registration."

19:02:03 3 A. Yeah.

19:02:06 4 Q. It says:

19:02:07 5 "During registration, you will be

19:02:08 6 asked to estimate the amount you are planning

19:02:08 7 to participate with. If you are a United States

19:02:11 8 ... citizen, buy-in amounts of \$100,000 or more

19:02:16 9 will require an additional step in verification -

19:02:18 10 uploading a high-quality scan of your passport

19:02:21 11 photo page, as well as a photo of your face."

19:02:23 12 (As read.)

19:02:25 13 A. Yeah.

19:02:25 14 Q. So is the -- is it your understanding

19:02:28 15 that this guide establishes additional requirements

19:02:31 16 for a person in the U.S. who wants to buy more

19:02:33 17 than \$100,000 of Kin?

19:02:36 18 A. Yeah.

19:02:44 19 Q. Previously you had talked about copy

19:02:47 20 and paste \$10,000; right?

19:02:51 21 A. Yeah.

19:02:53 22 Q. Is it your understanding that the

19:02:55 1 amount that one could buy in a public sale

19:02:59 2 had been increased from the \$10,000 level?

19:03:03 3 A. Can you repeat the question, please?

19:03:04 4 Q. Was it your understanding, at the time
19:03:08 5 of this User Registration Guide, that people could
19:03:12 6 buy Kin in a public sale for more than \$10,000?

19:03:16 7 A. If I remember correctly, at this stage,
19:03:19 8 people didn't participate yet. They -- they just
19:03:24 9 wrote their -- what they intend, what they want
19:03:30 10 to -- to -- to buy in the token sale. And at
19:03:39 11 the token sale itself, it was capped at ten.

19:03:50 12 Q. In the sale that was conducted --

19:03:51 13 that was actually conducted in September,

19:03:53 14 you thought there was still a cap of 10,000?

19:03:57 15 A. Yeah.

19:04:01 16 Q. Why would the User Registration Guide
19:04:05 17 allow for an investment of \$100,000 or more?

19:04:11 18 MR. WELSH: Objection.

19:04:13 19 You can answer.

19:04:15 20 Q. BY MR. MENDEL: Why would -- why would
19:04:16 21 the User Registration Guide contain a requirement
19:04:19 22 for people indicating an intent to invest \$100,000

19:04:23 1 or more?

19:04:25 2 A. Again, I don't remember. I think we
19:04:27 3 didn't know at the time how much -- what will
19:04:31 4 be the cap. So if somebody wrote 100,001, then
19:04:38 5 he needed to go through a whole different process.

19:04:48 6 Q. Do you recall discussion within Kik of
19:04:52 7 persons wanting to buy more than \$100,000 worth
19:04:56 8 of Kin in a public sale?

19:04:59 9 A. No.

19:05:00 10 MR. WELSH: Objection.

19:05:04 11 THE WITNESS: Not -- not to my
19:05:05 12 recollection. No.

19:05:17 13 Q. BY MR. MENDEL: Can you go back to
19:05:17 14 deposition Exhibit 79.

19:05:24 15 A. Yes.

19:05:42 16 Q. And I'm looking at the e-mail on the
19:05:46 17 page ending in 023 --

19:05:51 18 A. Yes.

19:05:51 19 Q. -- on Friday, September 8th, at 9:30
19:05:56 20 a.m. There's an e-mail from Ted Livingston.

19:06:03 21 Do you see that?

19:06:03 22 A. Yeah.

19:06:06 1 Q. And he writes:

19:06:08 2 "Hayeon. Agree token sale is much

19:06:11 3 easier. We have been using TDE everywhere else

19:06:13 4 to date, so it would be a change. If you think

19:06:16 5 that change is worth it, then I say we go for

19:06:19 6 it."

19:06:20 7 Do you know what this e-mail's about?

19:06:23 8 A. I think Hayeon wanted to change the
19:06:27 9 name from "token distribution event" to "token
19:06:36 10 sale." And then there was a talk about it.

19:06:38 11 And Ted said that he thinks it's much
19:06:41 12 easier. And at the end, I said that there were
19:06:43 13 too many places that we use "TDE" and, to change
19:06:45 14 them now, there will be a lot of -- a lot of
19:06:48 15 places that we need to go through.

19:06:54 16 Q. What was your understanding of why
19:06:57 17 Ms. Kim wanted to move from "token distribution
19:06:58 18 event" to "token sale"?

19:07:01 19 A. I have no idea. She's a marketing
19:07:05 20 person.

19:07:05 21 Q. Were the terms the same to you?

19:07:07 22 A. Yeah.

19:07:21 1 Q. Did you enter into any agreement
19:07:23 2 with Kik when you left?

19:07:25 3 A. Did I what?

19:07:28 4 Q. When did you leave Kik?

19:07:29 5 A. Officially at the end of February
19:07:33 6 2018. Not officially, probably around September
19:07:46 7 or October. I was still coming to the office.
19:07:50 8 It was like I -- I -- I looked from -- I looked
19:07:54 9 for a job from the office. But I wasn't a part
19:07:59 10 of the -- the day-to-day anymore, sort of moved
19:08:05 11 my responsibilities to other people.

19:08:11 12 Q. Did you start that phase of your --
19:08:14 13 of your employment at Kik before or after the
19:08:17 14 token distribution event?

19:08:21 15 A. Sort of at the same time. That was,
19:08:22 16 like, my last -- last thing.

19:08:28 17 Q. That was your last project?

19:08:29 18 A. Yeah. If I remember correctly, yeah.

19:08:37 19 Q. And when was it agreed that you would
19:08:41 20 leave in -- at the end of February 2018?

19:08:46 21 A. Probably around August or September.

19:08:56 22 Q. Did you come to any kind of written

19:09:00 1 agreement about your departure from Kik?

19:09:03 2 A. Yeah.

19:09:03 3 Q. Was there a separation agreement?

19:09:06 4 A. Not sure what a separation agreement

19:09:09 5 is.

19:09:11 6 Q. Did you have a -- like a -- did you

19:09:13 7 enter into a written agreement about the terms

19:09:15 8 of your departure?

19:09:17 9 A. Yeah.

19:09:22 10 Q. About how long was it?

19:09:24 11 A. I think that, from the moment I signed,

19:09:26 12 it was four months. I got salary for four months.

19:09:32 13 I was at the office probably until the middle

19:09:38 14 of December. And then I was still employed

19:09:44 15 at the company on paper until February 2018.

19:09:53 16 Q. Do you still have your separation

19:09:55 17 agreement?

19:09:57 18 A. I'm not sure what a separation

19:09:58 19 agreement is.

19:10:01 20 Q. We discussed a -- the contract or

19:10:05 21 the agreement that you entered into about the

19:10:09 22 terms of your departure; right?

19:10:11 1 A. I -- I don't understand the question.

19:10:13 2 Q. Let me ask you -- let me try to ask

19:10:16 3 it again.

19:10:17 4 Did you -- did you and Kik sign a

19:10:20 5 written document about when you would leave

19:10:23 6 the firm?

19:10:25 7 A. Yeah.

19:10:29 8 Q. And when did you sign that document?

19:10:33 9 A. I think that around October 2017.

19:10:39 10 Q. Do you have a name for that document?

19:10:44 11 A. No. I -- I --

19:10:44 12 Q. What do you call it?

19:10:46 13 A. I -- I don't know. I -- I don't

19:10:47 14 remember.

19:10:49 15 Q. So I call it a separation agreement.

19:10:52 16 A. Okay.

19:10:55 17 Q. Do you still have the separation

19:10:57 18 agreement?

19:10:58 19 A. Could be, yeah.

19:11:02 20 Q. How long is it?

19:11:03 21 A. How long is the separation agreement?

19:11:07 22 Q. Yeah. Is it, like, two pages? Five

19:11:09 1 pages?

19:11:09 2 A. Probably, like, one or two.

19:11:17 3 Q. And it allowed for your salary being
19:11:21 4 paid through February?

19:11:23 5 A. Yeah.

19:11:24 6 Q. What other benefits did you receive
19:11:27 7 under your separation agreement?

19:11:37 8 A. I don't remember exactly. I need --
19:11:38 9 I'll need to look at the document. But nothing
19:11:46 10 more than -- probably there wasn't, like, anything
19:11:50 11 else. Like, vacation days and, you know, pension
19:11:55 12 funds and everything else, like, according to
19:11:57 13 the law, something like that.

19:12:01 14 Q. Did you have any obligations under
19:12:05 15 the agreement?

19:12:10 16 A. Nothing like -- I don't -- don't
19:12:12 17 remember exactly. Nothing out of the ordinary
19:12:16 18 in my -- in my --

19:12:21 19 Q. When was Kik's last payment to you?

19:12:25 20 A. I -- I still got payment for a few
19:12:28 21 weeks on [sic] February 2018.

19:12:34 22 Q. Have you received any payments from

19:12:36 1 Kik from after February of 2018?

19:12:40 2 A. No.

19:12:42 3 Q. Are you expecting any additional

19:12:44 4 payments from Kik for any reason?

19:12:48 5 A. No. I -- I still have --

19:12:55 6 Q. Has anybody at all -- go ahead.

19:12:57 7 A. I still have options at the company.

19:13:01 8 Q. Stock options?

19:13:02 9 A. Stock options. Yeah.

19:13:05 10 Q. How many do you have?

19:13:07 11 A. I don't remember.

19:13:12 12 Q. When were those options given to you?

19:13:15 13 A. We got some when Kik acquired Rounds.

19:13:19 14 So that was at the end of 2017, beginning of

19:13:23 15 2018 -- no -- end of 2016 and beginning of two

19:13:28 16 thousand -- some -- somewhere there. And I also

19:13:33 17 had a regular option plan as an employee of the

19:13:36 18 company.

19:13:40 19 Q. Do you have a -- legal bills? Like,

19:13:43 20 do you have to pay your lawyer as a result of

19:13:46 21 this deposition?

19:13:47 22 A. Yeah.

19:13:50 1 Q. Are you paying for it, or is somebody
19:13:54 2 else covering the bills?

19:13:56 3 A. I'm paying it.

19:13:58 4 Q. You don't have any understanding that
19:14:00 5 someone's going to cover it for you; correct?

19:14:03 6 A. I wish. No.

19:14:13 7 Q. Have you done any work at all for Kik
19:14:16 8 after 2018?

19:14:18 9 A. No.

19:14:24 10 Q. Have you had any -- have you done any
19:14:27 11 work for the Kin Foundation after February 2018?

19:14:31 12 A. No.

19:14:32 13 Q. Do you still communicate with anybody --
19:14:34 14 any of the former -- sorry. Let me say it again.

19:14:39 15 Do you still communicate with anyone
19:14:41 16 who still works at Kik?

19:14:46 17 A. I don't know exactly who work -- works
19:14:48 18 at Kik right now. But no.

19:14:51 19 Q. Do you still communicate with Mr. Fishel?

19:14:54 20 A. Yeah.

19:14:58 21 Q. How frequently?

19:15:01 22 A. Probably once a month.

19:15:05 1 Q. Did you communicate with Mr. Fishel about
19:15:08 2 this deposition?

19:15:09 3 A. Yeah.

19:15:12 4 Q. When was your communication with him
19:15:14 5 about it?

19:15:15 6 A. When Cooley approached me that they
19:15:20 7 wanted --

19:15:21 8 Q. And when did -- when did that happen?

19:15:25 9 A. A couple of months, three months, two
19:15:28 10 months.

19:15:29 11 Q. Three months -- three months ago?

19:15:31 12 Four months ago?

19:15:33 13 A. I don't -- I don't remember exactly,
19:15:35 14 no.

19:15:37 15 Q. Did they -- how did they reach out
19:15:39 16 to you?

19:15:41 17 A. Dany was -- said that Cooley people
19:15:44 18 wanted to reach me because they wanted to do
19:15:48 19 a deposition of me. And then they contacted
19:15:52 20 me, Cooley. And I got a lawyer and --

19:16:01 21 Q. Did Cooley send you e-mails?

19:16:05 22 A. Probably. There was, I think, at

19:16:08 1 least one e-mail. Yeah.

19:16:16 2 Q. Following that communication from
19:16:19 3 Mr. Fishel where he told you that your deposition
19:16:23 4 was requested, did -- did you talk to Mr. Fishel
19:16:26 5 at any other time about the deposition?

19:16:29 6 A. I probably told him that I'm having
19:16:31 7 this dep -- deposition. I told him that I have
19:16:34 8 a lawyer, that I'm going to talk with you guys
19:16:37 9 and Cooley guys through my lawyer. That's pretty
19:16:42 10 much it.

19:16:44 11 Q. Did you talk to Mr. Fishel about what
19:16:47 12 you would say at the deposition?

19:16:49 13 A. No.

19:16:59 14 Q. Did you -- what -- what professionally
19:17:09 15 have you been doing after you left Kik?

19:17:13 16 A. I was a head of product at the company
19:17:16 17 called Resonai, AR/VR type of things, not related
19:17:22 18 to social or messaging or crypto or blockchain
19:17:28 19 in any kind of way. And that was for another
19:17:31 20 year and -- from February 2018.

19:17:37 21 And from April 2019, I'm employed
19:17:41 22 as a VP product at the company called Spot.IM,

19:17:50 1 a community conversation platform.

19:17:56 2 Q. How big of a company is that?

19:17:59 3 A. Around 100.

19:18:02 4 Q. Is that in Tel Aviv?

19:18:03 5 A. Half is in Tel Aviv, half in New York.

19:18:08 6 Q. Where is the other half?

19:18:09 7 A. In New York.

19:18:14 8 Q. Besides Mr. Fishel, have you been in

19:18:17 9 communication with any other former Kik employees?

19:18:20 10 A. Yeah.

19:18:22 11 Q. Who?

19:18:24 12 A. A lot of the people were Rounds employees

19:18:28 13 before that. Yohay Barski. Tanya Rofman. Elad

19:18:37 14 Weizman. Gadi Srebnik. Ory Chai (phonetic) Band.

19:18:42 15 That's pretty much it. Maybe a few more, but ...

19:18:50 16 Q. Among those people -- among those people

19:18:53 17 you just identified, did you talk to any of them

19:18:55 18 about this deposition?

19:18:58 19 A. No.

19:19:03 20 Q. Do you know what Kik the company --

19:19:05 21 let me state -- start again.

19:19:07 22 Do you have any understanding of what

19:19:09 1 Kik -- the company Kik Interactive is doing now?

19:19:15 2 MR. WELSH: Objection.

19:19:19 3 Q. BY MR. MENDEL: Do you have any

19:19:19 4 understanding of its business -- its business

19:19:21 5 right now?

19:19:22 6 A. I understood that they sold the Kik --

19:19:25 7 the Kik app to someone and the team to someone

19:19:30 8 else and the Kin -- and there's another team

19:19:34 9 still doing Kin in some form or another.

19:19:42 10 Q. What do you know about the Kin?

19:19:46 11 A. Not -- not much.

19:19:48 12 MR. WELSH: Objection.

19:19:53 13 Q. BY MR. MENDEL: You just said that

19:19:54 14 you believe that Kik did something with its

19:19:57 15 Kin, it -- it went to somebody.

19:19:59 16 Do you -- what's your knowledge of

19:20:00 17 that?

19:20:02 18 A. So I don't -- I have no idea. But,

19:20:04 19 like, the employees are -- got to one company,

19:20:09 20 and the app itself got to another company. And

19:20:14 21 Kin is continuing. I don't know how or what or

19:20:19 22 in what capacity.

19:20:23 1 Q. Which -- where -- where did Kik employees
19:20:26 2 go to? What new company?
19:20:27 3 A. I don't know it's name. Something in
19:20:30 4 Canada, I think.
19:20:35 5 Q. Do you -- have you ever heard of a
19:20:36 6 company called Code Inc.?
19:20:39 7 A. Code Inc.?
19:20:41 8 Q. Yeah.
19:20:42 9 A. No.
19:20:47 10 Q. C-o-d-e, I-n-c?
19:20:51 11 A. No.
19:20:54 12 Q. Are you aware of Mr. Livingston working
19:20:57 13 at any other companies besides Kik?
19:21:00 14 A. No.
19:21:05 15 Q. Did you meet with your lawyer Mr. Jacoby
19:21:08 16 [sic] to prepare for today's deposition?
19:21:12 17 A. Yeah.
19:21:15 18 Q. Am I saying his name -- is it Yacoby
19:21:17 19 or Jacoby? How do you say it?
19:21:22 20 MR. YACOBY: Yacoby, with a "Y."
19:21:23 21 MR. MENDEL: Yacoby with a "Y"; right?
19:21:25 22 MR. YACOBY: Yes. With a "Y."

19:21:27 1 MR. MENDEL: Thank you.

19:21:30 2 Q. BY MR. MENDEL: How long did you meet

19:21:31 3 with Mr. Yacoby --

19:21:32 4 A. Probably, like, an hour.

19:21:32 5 Q. -- to prepare for the deposition today?

19:21:35 6 A. Probably, like, an hour.

19:21:37 7 Q. An hour. Okay.

19:21:40 8 When did you meet with him?

19:21:42 9 A. On Tuesday.

19:21:46 10 Q. Did you have any telephone calls with

19:21:48 11 him?

19:21:50 12 A. Yeah.

19:21:51 13 Q. Did you have telephone calls about the

19:21:55 14 substance of the deposition?

19:22:01 15 A. I'm not sure what you mean. There's

19:22:02 16 a -- there was a lot of talk about the --

19:22:07 17 Q. I'm not talking about the scheduling

19:22:09 18 or the logistics. I'm talking about, like, what

19:22:12 19 your testimony would be.

19:22:13 20 Did you have any telephone calls about

19:22:14 21 that?

19:22:15 22 A. Yeah.

19:22:15 1 Q. How many?

19:22:18 2 A. One, two.

19:22:22 3 Q. Did you have any meetings or telephone

19:22:24 4 calls with lawyers for Kik in preparation for

19:22:27 5 your deposition today?

19:22:28 6 A. No.

19:22:31 7 Q. Did you talk to Cooley, the law firm,

19:22:32 8 at all about the substance of your deposition

19:22:35 9 today?

19:22:36 10 A. No.

19:22:39 11 Q. Did you review any documents in

19:22:41 12 preparation for your testimony today?

19:22:43 13 A. Yeah.

19:22:45 14 Q. About how many documents did you

19:22:47 15 review?

19:22:48 16 A. About how many you showed me today.

19:22:50 17 Q. Can you give us a few seconds?

19:23:07 18 A. Sure.

19:23:15 19 MR. MENDEL: We pass the witness.

19:23:19 20 MR. WELSH: Thank you.

19:23:19 21 We can say we're not going to show any

19:23:22 22 additional documents. We may have a few questions.

19:23:23 1 But we'd like to take a couple minutes to confer,
19:23:26 2 if that's all right. A five-minute break?
19:23:29 3 MR. MENDEL: That's fine.
19:23:34 4 THE VIDEOGRAPHER: Going off --
19:23:34 5 MR. MENDEL: We can go off the record.
19:23:35 6 That's fine.
19:23:36 7 THE COURT REPORTER: Just a second.
19:23:36 8 Just a second.
19:23:36 9 THE VIDEOGRAPHER: Just a second,
19:23:36 10 guys.
19:23:36 11 THE COURT REPORTER: Just a second.
19:23:40 12 THE VIDEOGRAPHER: Going off the video
19:23:41 13 record, in the deposition of Ilan Leibovich, at
19:23:45 14 7:23 p.m.
19:24:02 15 (Recess from 7:23 p.m. to 7:35 p.m.)
19:35:12 16 THE VIDEOGRAPHER: Going back on the
19:35:14 17 video record, in the deposition of Ilan Leibovich,
19:35:16 18 at 7:35 p.m.
19:35:19 19 MR. WELSH: Kik Interactive has no
19:35:24 20 questions for the witness. Thank you for his
19:35:25 21 time.
19:35:28 22 MR. MENDEL: Mr. Leibovich, thank you

19:35:29 1 very much for your cooperation, for appearing
19:35:31 2 today and for your testimony. We really appreciate
19:35:35 3 it. And just to recap what was agreed to during
19:35:40 4 our break, the SEC understands that the witness
19:35:44 5 does not wish to read and sign the transcript
19:35:49 6 and that Gradillas will hold the transcript and --
19:35:53 7 and the exhibits and deliver them in due course
19:35:57 8 to the parties.

19:35:58 9 THE WITNESS: Yeah.

19:36:01 10 THE VIDEOGRAPHER: This is the end of
19:36:03 11 DVD No. 2 and the end of the --

19:36:06 12 MR. MENDEL: And the SEC has nothing
19:36:08 13 further.

19:36:09 14 THE VIDEOGRAPHER: This is the end of
19:36:12 15 DVD No. 2 and the end of the videotape deposition
19:36:13 16 of Ilan Leibovich. Going off the record at 7:36
19:36:15 17 p.m.

18 (The deposition concluded at 7:36 p.m.)

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1

CERTIFICATE OF REPORTER

2

3 I, BRENDA MATZOV, CA CSR 9243, do hereby
4 certify:

5 That, prior to being examined, the witness
6 named in the foregoing deposition was duly sworn
7 or affirmed by me to testify the truth, the whole
8 truth, and nothing but the truth;

9 That the foregoing deposition was taken
10 before me at the time and place herein set forth,
11 at which time the aforesaid proceedings were
12 stenographically recorded by me and thereafter
13 transcribed by me;

14 That the foregoing transcript, as
15 typed, is a true record of the said proceedings;

16 And I further certify that I am not
17 interested in the action.

18

19 Dated this 19th day of December, 2019.

20

21


BRENDA MATZOV, CA CSR 9243

22

1 CERTIFICATE OF WITNESS
2

3 I, ILAN LEIBOVICH, witness herein, do
4 hereby certify and declare the within and foregoing
5 transcription to be my examination under oath in
6 the said action taken on December 19, 2019, with
7 the exception of the changes listed on the errata
8 sheet, if any;

9 That I have read, corrected, and do hereby
10 affix my signature under penalty of perjury to said
11 examination under oath.

12

13

14

15

16

17 ILAN LEIBOVICH, Witness

18 Date

19

20

21

22

1 ERRATA SHEET

2 Case. U.S. SECURITIES AND EXCHANGE COMMISSION

3 vs. KIK INTERACTIVE INC.

4 Date: DECEMBER 19, 2019

5 Witness: ILAN LEIBOVICH

6

7 Page ____ Line ____ Change _____

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20 Reason _____

21

22 _____

ILAN LEIBOVICH, Witness

Date